

H.R. 5005**SHOWING THE AMENDMENT RECOMMENDED BY
THE COMMITTEE ON GOVERNMENT REFORM**

Strike all after the enacting clause and insert the following:

1 **SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Homeland Security Act of 2002”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Construction; severability.
- Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

- Sec. 101. Establishment; mission.
- Sec. 102. Secretary; functions.
- Sec. 103. Other officers.

**TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE
PROTECTION; CRITICAL INFRASTRUCTURE INFORMATION****Subtitle A—Information Analysis and Infrastructure Protection**

- Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.
- Sec. 202. Functions transferred.
- Sec. 203. Access to information.

Subtitle B—Critical Infrastructure Information

- Sec. 211. Short title.
- Sec. 212. Definitions.
- Sec. 213. Designation of critical infrastructure protection program.
- Sec. 214. Protection of voluntarily shared critical infrastructure information.
- Sec. 215. No private right of action.
- Sec. 216. Applicability.

**TITLE III—CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND
NUCLEAR COUNTERMEASURES**

2

- Sec. 301. Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures.
- Sec. 302. Functions transferred.
- Sec. 303. Conduct of certain public health-related activities.
- Sec. 304. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

- Sec. 401. Under Secretary for Border and Transportation Security.
- Sec. 402. Functions transferred.
- Sec. 403. Visa issuance.
- Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
- Sec. 405. Interagency common rules.
- Sec. 406. Immigration functions.
- Sec. 407. Citizenship and Immigration Services Ombudsman.
- Sec. 408. Seaport security functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

- Sec. 501. Under Secretary for Emergency Preparedness and Response.
- Sec. 502. Functions transferred.
- Sec. 503. Nuclear incident response.
- Sec. 504. Definition.
- Sec. 505. Conduct of certain public health-related activities.
- Sec. 506. Minimum requirements for private security officers.

TITLE VI—MANAGEMENT

- Sec. 601. Deputy Secretary for Management.
- Sec. 602. Chief Financial Officer.
- Sec. 603. Chief Information Officer.
- Sec. 604. Establishment of Office for Civil Rights and Civil Liberties.

TITLE VII—COORDINATION; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS; ACQUISITIONS; INFORMATION SHARING; PROPERTY

Subtitle A—Coordination With Non-Federal Entities

- Sec. 701. Responsibilities.
- Sec. 702. Intergovernmental Coordinating Council.

Subtitle B—Inspector General

- Sec. 710. Authority of the Secretary.

Subtitle C—United States Secret Service

- Sec. 720. Functions transferred.

Subtitle D—General Provisions

- Sec. 730. Human resource management.
- Sec. 731. Labor-management relations.
- Sec. 732. Reporting requirements.
- Sec. 733. Requirement to develop comprehensive risk management assessment and homeland security strategy.



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- Sec. 734. Military activities.
- Sec. 735. Reorganization; transfer.
- Sec. 736. Miscellaneous provisions.
- Sec. 737. Authorization of appropriations.

Subtitle E—Acquisitions

- Sec. 740. Research and development projects.
- Sec. 741. Personal services.
- Sec. 742. Special streamlined acquisition authority.
- Sec. 743. Program to encourage and support innovative solutions to enhance homeland security.
- Sec. 744. Risk sharing and indemnification.
- Sec. 745. Procurements from small businesses.

Subtitle F—Information Sharing

- Sec. 750. Short title.
- Sec. 751. Findings and sense of Congress.
- Sec. 752. Facilitating homeland security information sharing procedures.
- Sec. 753. Report.
- Sec. 754. Authorization of appropriations.
- Sec. 755. Authority to share grand jury information.
- Sec. 756. Authority to share electronic, wire, and oral interception information.
- Sec. 757. Foreign intelligence information.
- Sec. 758. Information acquired from an electronic surveillance.
- Sec. 759. Information acquired from a physical search.

Subtitle G—Property

- Sec. 761. Real property management.
- Sec. 762. Criteria for using authorities.
- Sec. 763. Outleases.
- Sec. 764. Review and revision of transactions by administrator.
- Sec. 765. Transactional reports.

TITLE VIII—TRANSITION

- Sec. 801. Definitions.
- Sec. 802. Reorganization plan.
- Sec. 803. Transitional authorities.
- Sec. 804. Savings provisions.
- Sec. 805. Terminations.
- Sec. 806. Incidental transfers.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

- Sec. 901. Executive department.
- Sec. 902. Executive Schedule.
- Sec. 903. Inspector General.
- Sec. 904. Chief Financial Officer.
- Sec. 905. Chief Information Officer.
- Sec. 906. United States Secret Service.
- Sec. 907. Coast Guard.
- Sec. 908. Strategic national stockpile and smallpox vaccine development.
- Sec. 909. Select agent registration.
- Sec. 910. Membership of Secretary on National Security Council.



Sec. 911. National Bio-Weapons Defense Analysis Center.

TITLE X—INFORMATION SECURITY

Sec. 1001. Information security.

Sec. 1002. Management of information technology.

Sec. 1003. National Institute of Standards and Technology.

Sec. 1004. Information security and privacy advisory board.

Sec. 1005. Technical and conforming amendments.

Sec. 1006. Construction.

Sec. 1007. Effective date.

TITLE XI—ADDITIONAL RESPONSIBILITIES OF SECRETARY

Sec. 1101. Homeland security events.

Sec. 1102. Standards and reporting.

Sec. 1103. Special commission to review air quality.

1 **SEC. 2. DEFINITIONS.**

2 The following shall apply for purposes of this Act:

3 (1) The term “American homeland” or “home-
4 land” means the United States, in a geographic
5 sense.

6 (2) The term “assets” includes contracts, facili-
7 ties, property, records, unobligated or unexpended
8 balances of appropriations, and other funds or re-
9 sources (other than personnel).

10 (3) The term “Department” means the Depart-
11 ment of Homeland Security.

12 (4) The term “emergency response providers”
13 includes Federal, State, and local emergency public
14 safety, law enforcement, emergency response, emer-
15 gency medical, and related personnel, agencies, and
16 authorities.

17 (5) The term “executive agency” means an ex-
18 ecutive agency and a military department, as de-



1 fined, respectively, in sections 105 and 102 of title
2 5, United States Code.

3 (6) The term “functions” includes authorities,
4 powers, rights, privileges, immunities, programs,
5 projects, activities, duties, responsibilities, and obli-
6 gations.

7 (7) The term “homeland security” means the
8 deterrence, detection, preemption, prevention, and
9 defense against terrorism targeted at the territory,
10 sovereignty, population, or infrastructure of the
11 United States, including the management of the pro-
12 grams and policies necessary to respond to and re-
13 cover from terrorist attacks within the United
14 States.

15 (8) The term “local government” has the mean-
16 ing given in section 102(6) of the Robert T. Stafford
17 Disaster Relief and Emergency Assistance Act (Pub-
18 lic Law 93–288).

19 (9) The term “major disaster” has the meaning
20 given in section 102(2) of the Robert T. Stafford
21 Disaster Relief and Emergency Assistance Act (Pub-
22 lic Law 93–288).

23 (10) The term “personnel” means officers and
24 employees.



1 (11) The terms “terrorism” and “terrorist at-
2 tack” mean the calculated attack or threat of attack
3 against persons, property, or infrastructure to incul-
4 cate fear and intimidate or coerce a government, the
5 civilian population, or any segment of such popu-
6 lation, in the pursuit of political, religious, or ideo-
7 logical goals.

8 (12) The term “Secretary” means the Secretary
9 of Homeland Security.

10 (13) The term “United States”, when used in
11 a geographic sense, means any State of the United
12 States, the District of Columbia, Puerto Rico, the
13 Virgin Islands, Guam, American Samoa, and the
14 Commonwealth of the Northern Mariana Islands,
15 any possession of the United States, and any waters
16 within the jurisdiction of the United States.

17 **SEC. 3. CONSTRUCTION; SEVERABILITY.**

18 Any provision of this Act held to be invalid or unen-
19 forceable by its terms, or as applied to any person or cir-
20 cumstance, shall be construed so as to give it the max-
21 imum effect permitted by law, unless such holding shall
22 be one of utter invalidity or unenforceability, in which
23 event such provision shall be deemed severable from this
24 Act and shall not affect the remainder thereof, or the ap-



1 plication of such provision to other persons not similarly
2 situated or to other, dissimilar circumstances.

3 **SEC. 4. EFFECTIVE DATE.**

4 This Act shall take effect thirty days after the date
5 of enactment or, if enacted within thirty days before Janu-
6 ary 1, 2003, on January 1, 2003.

7 **TITLE I—DEPARTMENT OF**
8 **HOMELAND SECURITY**

9 **SEC. 101. ESTABLISHMENT; MISSION.**

10 (a) ESTABLISHMENT.—There is established a De-
11 partment of Homeland Security as an executive depart-
12 ment of the United States within the meaning of title 5,
13 United States Code.

14 (b) MISSION.—(1) The primary mission of the De-
15 partment is to—

16 (A) prevent terrorist attacks within the United
17 States;

18 (B) reduce the vulnerability of the United
19 States to terrorism;

20 (C) minimize the damage, and assist in the re-
21 covery, from terrorist attacks that do occur within
22 the United States; and

23 (D) act as a focal point regarding natural and
24 man-made crises and emergency planning, and carry



1 out all functions of entities transferred to the De-
2 partment as provided by law.

3 (2) In carrying out the mission described in para-
4 graph (1), and as further described in this Act, the De-
5 partment's primary responsibilities shall include—

6 (A) information analysis and infrastructure pro-
7 tection;

8 (B) chemical, biological, radiological, nuclear,
9 and related countermeasures;

10 (C) border and transportation security;

11 (D) emergency preparedness and response; and

12 (E) coordination (including the provision of
13 training and equipment) with other executive agen-
14 cies, with State and local government personnel,
15 agencies, and authorities, with the District of Co-
16 lumbia, with the private sector, and with other enti-
17 ties.

18 (3) RESPONSIBILITY FOR INVESTIGATING AND PROS-
19 ECUTING TERRORISM.—Except as specifically provided by
20 law with respect to entities transferred to the Department
21 under this Act, primary responsibility for investigating
22 and prosecuting acts of terrorism shall be vested not in
23 the Department, but rather in Federal, State, and local
24 law enforcement agencies with jurisdiction over the acts
25 in question.



1 **SEC. 102. SECRETARY; FUNCTIONS.**

2 (a) SECRETARY.—(1) There is a Secretary of Home-
3 land Security, appointed by the President, by and with the
4 advice and consent of the Senate.

5 (2) The Secretary is the head of the Department and
6 shall have direction, authority, and control over it.

7 (3) All functions of all officers, employees, and orga-
8 nizational units of the Department are vested in the Sec-
9 retary.

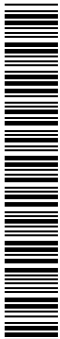
10 (b) FUNCTIONS.—The Secretary—

11 (1) may delegate any of his functions to any of-
12 ficer, employee, or organizational unit of the Depart-
13 ment, unless otherwise provided by this Act;

14 (2) may promulgate such regulations as nec-
15 essary to carry out the functions and duties of the
16 Department as set forth in this Act;

17 (3) shall have the authority to make contracts,
18 grants, and cooperative agreements, and to enter
19 into agreements with other executive agencies, as
20 may be necessary and proper to carry out his re-
21 sponsibilities under this Act or as otherwise provided
22 by law;

23 (4) shall take reasonable steps to ensure that
24 information systems and databases of the Depart-
25 ment are compatible with each other; and



1 (5) shall take reasonable steps to consolidate
2 field offices of the Department in a manner that
3 promotes efficiency without diminishing effective-
4 ness.

5 (c) CONSTRUCTION.—This Act may not be construed
6 as establishing any regulatory authority for the Secretary,
7 except to the extent that the regulatory authority estab-
8 lished by another Act is transferred to the Secretary by
9 this Act. Nor shall this Act be construed as altering the
10 regulatory authority of any other executive agency, except
11 to the extent that a regulatory authority of another execu-
12 tive agency is expressly transferred to the Department by
13 this Act.

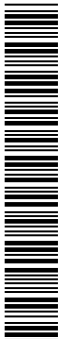
14 **SEC. 103. OTHER OFFICERS.**

15 (a) DEPUTY SECRETARIES; UNDER AND ASSISTANT
16 SECRETARIES; CFO.—To assist the Secretary in the per-
17 formance of his functions, there are the following officers,
18 appointed by the President, by and with the advice and
19 consent of the Senate:

20 (1) A Deputy Secretary of Homeland Security,
21 who shall be the Secretary's first assistant for pur-
22 poses of chapter 33, subchapter 3, of title 5, United
23 States Code.

24 (2) A Deputy Secretary for Policy.

25 (3) A Deputy Secretary for Management.



1 (4) An Under Secretary for Information Anal-
2 ysis and Infrastructure Protection.

3 (5) An Under Secretary for Chemical, Biologi-
4 cal, Radiological, and Nuclear Countermeasures.

5 (6) An Under Secretary for Border and Trans-
6 portation Security.

7 (7) An Under Secretary for Emergency Pre-
8 paredness and Response.

9 (8) Not more than four Assistant Secretaries.

10 (9) A Chief Financial Officer.

11 (b) INSPECTOR GENERAL.—To assist the Secretary
12 in the performance of his functions, there is an Inspector
13 General, who shall be appointed as provided in section
14 3(a) of the Inspector General Act of 1978.

15 (c) COMMANDANT OF THE COAST GUARD.—To assist
16 the Secretary in the performance of his functions, there
17 is a Commandant of the Coast Guard, who shall be ap-
18 pointed as provided in section 44 of title 14, United States
19 Code.

20 (d) PRIVACY OFFICER.—The Secretary shall appoint
21 a senior official in the Department to assume primary re-
22 sponsibility for privacy policy, including—

23 (1) assuring that the use of new technologies
24 sustains, and does not erode, the protections pro-



1 vided in all statutes relating to the use, collection,
2 and disclosure of personal information;

3 (2) assuring that personal information con-
4 tained in systems of records is handled in full com-
5 pliance with fair information practices under appli-
6 cable provisions of section 552a of title 5, United
7 States Code, popularly known as the Privacy Act of
8 1974;

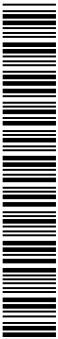
9 (3) evaluating legislative and regulatory pro-
10 posals involving collection, use, and disclosure of
11 personal information by the Federal Government for
12 consistency with section 552a of title 5, United
13 States Code;

14 (4) conducting a privacy impact assessment of
15 proposed rules when the Secretary deems such as-
16 sessment appropriate; and

17 (5) preparing a report to the Congress on an
18 annual basis that—

19 (A) identifies any complaints received from
20 the public regarding privacy violations by the
21 Department; and

22 (B) describes how the Department ad-
23 dressed such complaints, and internal controls
24 implemented by the Department to improve pri-
25 vacy protections.



1 (e) OTHER OFFICERS.—To assist the Secretary in
2 the performance of his functions, there are the following
3 officers, appointed by the President:

4 (1) A General Counsel, who shall be the chief
5 legal officer of the Department.

6 (2) Not more than eight Assistant Secretaries,
7 one of which shall be an Assistant Secretary for
8 Narcotics Interdiction.

9 (3) A Director of the Secret Service.

10 (4) A Chief Information Officer.

11 (f) ASSISTANT SECRETARY FOR NARCOTICS INTER-
12 DICTION.—The Assistant Secretary for Narcotics Interdic-
13 tion shall—

14 (1) coordinate policy and operations within the
15 Department and with other Federal departments
16 and agencies to interdict the entry of illicit drugs
17 into the United States;

18 (2) ensure the adequacy of resources within the
19 Department for illicit drug interdiction; and

20 (3) serve as the United States Interdiction Co-
21 ordinator for the Director of National Drug Control
22 Policy.

23 (g) PERFORMANCE OF SPECIFIC FUNCTIONS.—Sub-
24 ject to the provisions of this Act, every officer of the de-



1 partment shall perform the functions specified by law for
2 his office or prescribed by the Secretary.

3 **TITLE II—INFORMATION ANAL-**
4 **YSIS AND INFRASTRUCTURE**
5 **PROTECTION; CRITICAL IN-**
6 **FRASTRUCTURE INFORMA-**
7 **TION**

8 **Subtitle A—Information Analysis**
9 **and Infrastructure Protection**

10 **SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS**
11 **AND INFRASTRUCTURE PROTECTION.**

12 The Secretary, acting through the Under Secretary
13 for Information Analysis and Infrastructure Protection,
14 shall have responsibility for the following:

15 (1) Receiving and analyzing law enforcement in-
16 formation, intelligence, and other information in
17 order to understand the nature and scope of the ter-
18 rorist threat to the American homeland and to de-
19 tect and identify potential threats of terrorism with-
20 in the United States.

21 (2) Comprehensively assessing the
22 vulnerabilities of the key resources and critical infra-
23 structures in the United States.

24 (3) Integrating relevant information, intel-
25 ligence analyses, and vulnerability assessments



1 (whether such information, analyses, or assessments
2 are provided or produced by the Department or oth-
3 ers) to identify protective priorities and support pro-
4 tective measures by the Department, by other execu-
5 tive agencies, by State and local government per-
6 sonnel, agencies, and authorities, by the private sec-
7 tor, and by other entities.

8 (4) Developing a comprehensive national plan
9 for securing the key resources and critical infra-
10 structures in the United States.

11 (5) Taking or seeking to effect necessary meas-
12 ures to protect the key resources and critical infra-
13 structures in the United States, in coordination with
14 other executive agencies and in cooperation with
15 State and local government personnel, agencies, and
16 authorities, the private sector, and other entities.

17 (6) Administering the Homeland Security Advi-
18 sory System, exercising primary responsibility for
19 public threat advisories, and (in coordination with
20 other executive agencies) providing specific warning
21 information to State and local government per-
22 sonnel, agencies, and authorities, the private sector,
23 other entities, and the public, as well as advice about
24 appropriate protective actions and countermeasures.



1 (7) Reviewing, analyzing, and making rec-
2 ommendations for improvements in the policies and
3 procedures governing the sharing of law enforce-
4 ment, intelligence, and other information relating to
5 homeland security within the Federal Government
6 and between such government and State and local
7 government personnel, agencies, and authorities.

8 **SEC. 202. FUNCTIONS TRANSFERRED.**

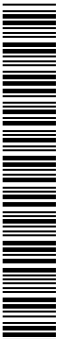
9 In accordance with title VIII, there shall be trans-
10 ferred to the Secretary the functions, personnel, assets,
11 and liabilities of the following:

12 (1) The National Infrastructure Protection
13 Center of the Federal Bureau of Investigation (other
14 than the Computer Investigations and Operations
15 Section), including the functions of the Attorney
16 General relating thereto.

17 (2) The National Communications System of
18 the Department of Defense, including the functions
19 of the Secretary of Defense relating thereto.

20 (3) The Critical Infrastructure Assurance Of-
21 fice of the Department of Commerce, including the
22 functions of the Secretary of Commerce relating
23 thereto.

24 (4) The Computer Security Division of the Na-
25 tional Institute of Standards and Technology, in-



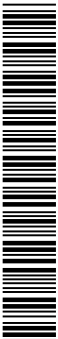
1 including the functions of the Secretary of Commerce
2 relating thereto and the functions of the National
3 Institute of Standards and Technology and the Sec-
4 retary of Commerce relating to information security
5 established by the amendments made by title X.

6 (5) The National Infrastructure Simulation and
7 Analysis Center of the Department of Energy, in-
8 cluding the functions of the Secretary of Energy re-
9 lating thereto.

10 (6) The Federal Computer Incident Response
11 Center of the General Services Administration, in-
12 cluding the functions of the Administrator of Gen-
13 eral Services relating thereto.

14 **SEC. 203. ACCESS TO INFORMATION.**

15 The Secretary shall have access to all reports, assess-
16 ments, and analytical information relating to threats of
17 terrorism in the United States and to other areas of re-
18 sponsibility described in section 101(b), and to all infor-
19 mation concerning infrastructure or other vulnerabilities
20 of the United States to terrorism, whether or not such
21 information has been analyzed, that may be collected, pos-
22 sessed, or prepared by any executive agency, except as oth-
23 erwise directed by the President. The Secretary shall also
24 have access to other information relating to the foregoing
25 matters that may be collected, possessed, or prepared by



1 an executive agency, as the President may further provide.
2 With respect to the material to which the Secretary has
3 access under this section—

4 (1) the Secretary may obtain such material by
5 request, and may enter into cooperative arrange-
6 ments with other executive agencies to share such
7 material on a regular or routine basis, including re-
8 quests or arrangements involving broad categories of
9 material;

10 (2) regardless of whether the Secretary has
11 made any request or entered into any cooperative ar-
12 rangement pursuant to paragraph (1), all executive
13 agencies promptly shall provide to the Secretary—

14 (A) all reports, assessments, and analytical
15 information relating to threats of terrorism in
16 the United States and to other areas of respon-
17 sibility described in section 101(b);

18 (B) all information concerning infrastruc-
19 ture or other vulnerabilities of the United
20 States to terrorism, whether or not such infor-
21 mation has been analyzed;

22 (C) all information relating to significant
23 and credible threats of terrorism in the United
24 States, whether or not such information has
25 been analyzed, if the President has provided



1 that the Secretary shall have access to such in-
2 formation; and

3 (D) such other material as the President
4 may further provide; and

5 (3) the Secretary shall ensure that any material
6 received pursuant to this section is protected from
7 unauthorized disclosure and handled and used only
8 for the performance of official duties, and that any
9 intelligence information shared under this section
10 shall be transmitted, retained, and disseminated con-
11 sistent with the authority of the Director of Central
12 Intelligence to protect intelligence sources and meth-
13 ods under the National Security Act and related pro-
14 cedures or, as appropriate, similar authorities of the
15 Attorney General concerning sensitive law enforce-
16 ment information.

17 **Subtitle B—Critical Infrastructure**
18 **Information**

19 **SEC. 211. SHORT TITLE.**

20 This subtitle may be cited as the “Critical Infrastruc-
21 ture Information Act of 2002”.

22 **SEC. 212. DEFINITIONS.**

23 In this subtitle:



1 (1) AGENCY.—The term “agency” has the
2 meaning given it in section 551 of title 5, United
3 States Code.

4 (2) COVERED FEDERAL AGENCY.—The term
5 “covered Federal agency” means the Department of
6 Homeland Security and any agency designated by
7 the Department or with which the Department
8 shares critical infrastructure information including
9 the following:

10 (A) The Department of Justice.

11 (B) The Department of Defense.

12 (C) The Department of Commerce.

13 (D) The Department of Transportation.

14 (E) The Department of the Treasury.

15 (F) The Department of Health and
16 Human Services.

17 (G) The Department of Energy.

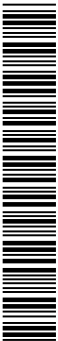
18 (H) The Environmental Protection Agency.

19 (I) The General Services Administration.

20 (J) The Federal Communications Commis-
21 sion.

22 (K) The Federal Energy Regulatory Com-
23 mission.

24 (L) The Nuclear Regulatory Commission.



1 (3) CRITICAL INFRASTRUCTURE INFORMA-
2 TION.—The term “critical infrastructure informa-
3 tion” means information not customarily in the pub-
4 lic domain and related to the security of critical in-
5 frastructure or protected systems—

6 (A) actual, potential, or threatened inter-
7 ference with, attack on, compromise of, or inca-
8 pacitation of critical infrastructure or protected
9 systems by either physical or computer-based
10 attack or other similar conduct (including the
11 misuse of or unauthorized access to all types of
12 communications and data transmission systems)
13 that violates Federal, State, or local law, harms
14 interstate commerce of the United States, or
15 threatens public health or safety;

16 (B) the ability of any critical infrastruc-
17 ture or protected system to resist such inter-
18 ference, compromise, or incapacitation, includ-
19 ing any planned or past assessment, projection,
20 or estimate of the vulnerability of critical infra-
21 structure or a protected system, including secu-
22 rity testing, risk evaluation thereto, risk man-
23 agement planning, or risk audit; or

24 (C) any planned or past operational prob-
25 lem or solution regarding critical infrastructure



1 or protected systems, including repair, recovery,
2 reconstruction, insurance, or continuity, to the
3 extent it is related to such interference, com-
4 promise, or incapacitation.

5 (4) CRITICAL INFRASTRUCTURE PROTECTION
6 PROGRAM.—The term “critical infrastructure protec-
7 tion program” means any component or bureau of a
8 covered Federal agency that has been designated by
9 the President or any agency head to receive critical
10 infrastructure information.

11 (5) INFORMATION SHARING AND ANALYSIS OR-
12 GANIZATION.—The term “Information Sharing and
13 Analysis Organization” means any formal or infor-
14 mal entity or collaboration created or employed by
15 public or private sector organizations, for purposes
16 of—

17 (A) gathering and analyzing critical infra-
18 structure information in order to better under-
19 stand security problems and interdependencies
20 related to critical infrastructure and protected
21 systems, so as to ensure the availability, integ-
22 rity, and reliability thereof;

23 (B) communicating or disclosing critical
24 infrastructure information to help prevent, de-
25 tect, mitigate, or recover from the effects of a



1 interference, compromise, or a incapacitation
2 problem related to critical infrastructure or pro-
3 tected systems; and

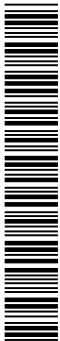
4 (C) voluntarily disseminating critical infra-
5 structure information to its members, State,
6 local, and Federal Governments, or any other
7 entities that may be of assistance in carrying
8 out the purposes specified in subparagraphs (A)
9 and (B).

10 (6) PROTECTED SYSTEM.—The term “protected
11 system”—

12 (A) means any service, physical or com-
13 puter-based system, process, or procedure that
14 directly or indirectly affects the viability of a fa-
15 cility of critical infrastructure; and

16 (B) includes any physical or computer-
17 based system, including a computer, computer
18 system, computer or communications network,
19 or any component hardware or element thereof,
20 software program, processing instructions, or
21 information or data in transmission or storage
22 therein, irrespective of the medium of trans-
23 mission or storage.

24 (7) VOLUNTARY.—



1 (A) IN GENERAL.—The term “voluntary”,
2 in the case of any submittal of critical infra-
3 structure information to a covered Federal
4 agency, means the submittal thereof in the ab-
5 sence of such agency’s exercise of legal author-
6 ity to compel access to or submission of such
7 information and may be accomplished by a sin-
8 gle entity or an Information Sharing and Anal-
9 ysis Organization on behalf of itself or its mem-
10 bers.

11 (B) EXCLUSIONS.—The term
12 “voluntary”—

13 (i) in the case of any action brought
14 under the securities laws as is defined in
15 section 3(a)(47) of the Securities Ex-
16 change Act of 1934 (15 U.S.C.
17 78c(a)(47))—

18 (I) does not include information
19 or statements contained in any docu-
20 ments or materials filed with the Se-
21 curities and Exchange Commission, or
22 with Federal banking regulators, pur-
23 suant to section 12(i) of the Securities
24 Exchange Act of 1934 (15 U.S.C.
25 781(I)); and



1 (II) with respect to the submittal
2 of critical infrastructure information,
3 does not include any disclosure or
4 writing that when made accompanied
5 the solicitation of an offer or a sale of
6 securities; and

7 (ii) does not include information or
8 statements submitted or relied upon as a
9 basis for making licensing or permitting
10 determinations, or during regulatory pro-
11 ceedings.

12 **SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE**
13 **PROTECTION PROGRAM.**

14 A critical infrastructure protection program may be
15 designated as such by one of the following:

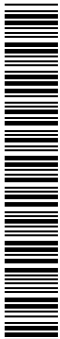
16 (1) The President.

17 (2) The Secretary of the Department of Home-
18 land Security.

19 (3) The head of a covered Federal agency by
20 notice published in the Federal Register. This duty
21 may not be delegated.

22 **SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRIT-**
23 **ICAL INFRASTRUCTURE INFORMATION.**

24 (a) PROTECTION.—

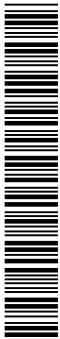


1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law, critical infrastructure information
3 (including the identity of the submitting person or
4 entity) that is voluntarily submitted to a covered
5 Federal agency for use by that agency regarding the
6 security of critical infrastructure and protected sys-
7 tems, if analysis, warning, interdependency study,
8 recovery, reconstitution, or other informational pur-
9 pose, when accompanied by an express statement
10 specified in paragraph (2)—

11 (A) shall be exempt from disclosure under
12 section 552 of title 5, United States Code (com-
13 monly referred to as the Freedom of Informa-
14 tion Act);

15 (B) shall not be subject to any agency
16 rules or judicial doctrine regarding ex parte
17 communications with a decision making official;

18 (C) shall not, without the written consent
19 of the person or entity submitting such infor-
20 mation, be used directly by such agency, any
21 other Federal, State, or local authority, or any
22 third party, in any civil action arising under
23 Federal or State law if such information is sub-
24 mitted in good faith;



1 (D) shall not, without the written consent
2 of the person or entity submitting such infor-
3 mation, be used or disclosed by any officer or
4 employee of the United States for purposes
5 other than the purposes of this subtitle,
6 except—

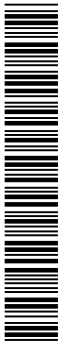
7 (i) in furtherance of an investigation
8 or the prosecution of a criminal act; or

9 (ii) when disclosure of the information
10 would be—

11 (I) to either House of Congress,
12 or to the extent of matter within its
13 jurisdiction, any committee or sub-
14 committee thereof, any joint com-
15 mittee thereof or subcommittee of any
16 such joint committee; or

17 (II) to the Comptroller General,
18 or any authorized representative of
19 the Comptroller General, in the course
20 of the performance of the duties of
21 the General Accounting Office.

22 (E) shall not, if provided to a State or
23 local government or government agency—



1 (i) be made available pursuant to any
2 State or local law requiring disclosure of
3 information or records;

4 (ii) otherwise be disclosed or distrib-
5 uted to any party by said State or local
6 government or government agency without
7 the written consent of the person or entity
8 submitting such information; or

9 (iii) be used other than for the pur-
10 pose of protecting critical infrastructure or
11 protected systems, or in furtherance of an
12 investigation or the prosecution of a crimi-
13 nal act; and

14 (F) does not constitute a waiver of any ap-
15 plicable privilege or protection provided under
16 law, such as trade secret protection.

17 (2) EXPRESS STATEMENT.—For purposes of
18 paragraph (1), the term “express statement”, with
19 respect to information or records, means—

20 (A) in the case of written information or
21 records, a written marking on the information
22 or records substantially similar to the following:
23 “This information is voluntarily submitted to
24 the Federal Government in expectation of pro-
25 tection from disclosure as provided by the provi-



1 sions of the Critical Infrastructure Information
2 Act of 2002.”; or

3 (B) in the case of oral information, a simi-
4 lar written statement submitted within a rea-
5 sonable period following the oral communica-
6 tion.

7 (b) LIMITATION.—No communication of critical in-
8 frastructure information to a covered Federal agency
9 made pursuant to this subtitle shall be considered to be
10 an action subject to the requirements of the Federal Advi-
11 sory Committee Act (5 U.S.C. App. 2).

12 (c) INDEPENDENTLY OBTAINED INFORMATION.—
13 Nothing in this section shall be construed to limit or other-
14 wise affect the ability of a State, local, or Federal Govern-
15 ment entity, agency, or authority, or any third party,
16 under applicable law, to obtain critical infrastructure in-
17 formation in a manner not covered by subsection (a), in-
18 cluding any information lawfully and properly disclosed
19 generally or broadly to the public and to use such informa-
20 tion in any manner permitted by law.

21 (d) TREATMENT OF VOLUNTARY SUBMITTAL OF IN-
22 FORMATION.—The voluntary submittal to the Government
23 of information or records that are protected from disclo-
24 sure by this subtitle shall not be construed to constitute



1 compliance with any requirement to submit such informa-
2 tion to a Federal agency under any other provision of law.

3 (e) PROCEDURES.—

4 (1) IN GENERAL.—The Secretary of the De-
5 partment of Homeland Security shall, in consulta-
6 tion with appropriate representatives of the National
7 Security Council and the Office of Science and Tech-
8 nology Policy, establish uniform procedures for the
9 receipt, care, and storage by Federal agencies of
10 critical infrastructure information that is voluntarily
11 submitted to the Government. The procedures shall
12 be established not later than 90 days after the date
13 of the enactment of this subtitle.

14 (2) ELEMENTS.—The procedures established
15 under paragraph (1) shall include mechanisms
16 regarding—

17 (A) the acknowledgement of receipt by
18 Federal agencies of critical infrastructure infor-
19 mation that is voluntarily submitted to the Gov-
20 ernment;

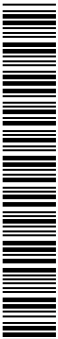
21 (B) the maintenance of the identification
22 of such information as voluntarily submitted to
23 the Government for purposes of and subject to
24 the provisions of this subtitle;



1 (C) the care and storage of such informa-
2 tion; and

3 (D) the protection and maintenance of the
4 confidentiality of such information so as to per-
5 mit the sharing of such information within the
6 Federal Government and with State and local
7 governments, and the issuance of notices and
8 warnings related to the protection of critical in-
9 frastructure and protected systems, in such
10 manner as to protect from public disclosure the
11 identity of the submitting person or entity, or
12 information that is proprietary, business sen-
13 sitive, relates specifically to the submitting per-
14 son or entity, and is otherwise not appropriately
15 in the public domain.

16 (f) PENALTIES.—Whoever, being an officer or em-
17 ployee of the United States or of any department or agen-
18 cy thereof, publishes, divulges, discloses, or makes known
19 in any manner or to any extent not authorized by law,
20 any critical infrastructure information protected from dis-
21 closure by this subtitle coming to him in the course of
22 this employment or official duties or by reason of any ex-
23 amination or investigation made by, or return, report, or
24 record made to or filed with, such department or agency
25 or officer or employee thereof, shall be fined under title



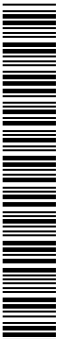
1 18 of the United States Code, imprisoned not more than
2 one year, or both, and shall be removed from office or em-
3 ployment.

4 (g) AUTHORITY TO ISSUE WARNINGS.—The Federal
5 Government may provide advisories, alerts, and warnings
6 to relevant companies, targeted sectors, other govern-
7 mental entities, or the general public regarding potential
8 threats to critical infrastructure as appropriate. In issuing
9 a warning, the Federal Government shall take appropriate
10 actions to protect from disclosure—

11 (1) the source of any voluntarily submitted crit-
12 ical infrastructure information that forms the basis
13 for the warning; or

14 (2) information that is proprietary, business
15 sensitive, relates specifically to the submitting per-
16 son or entity, or is otherwise not appropriately in
17 the public domain.

18 (h) AUTHORITY TO DELEGATE.—The President may
19 delegate authority to a critical infrastructure protection
20 program, designated under subsection (e), to enter into
21 a voluntary agreement to promote critical infrastructure
22 security, including with any Information Sharing and
23 Analysis Organization, or a plan of action as otherwise
24 defined in section 708 of the Defense Production Act of
25 1950 (50 U.S.C. App. 2158).



1 **SEC. 215. NO PRIVATE RIGHT OF ACTION.**

2 Nothing in this subtitle may be construed to create
3 a private right of action for enforcement of any provision
4 of this Act.

5 **SEC. 216. APPLICABILITY.**

6 Nothing in this subtitle shall apply to any informa-
7 tion submitted in the course of lobbying any covered Fed-
8 eral agency.

9 **TITLE III—CHEMICAL, BIOLOGI-**
10 **CAL, RADIOLOGICAL, AND NU-**
11 **CLEAR COUNTERMEASURES**

12 **SEC. 301. UNDER SECRETARY FOR CHEMICAL, BIOLOGICAL,**
13 **RADIOLOGICAL, AND NUCLEAR COUNTER-**
14 **MEASURES.**

15 The Secretary, acting through the Under Secretary
16 for Chemical, Biological, Radiological, and Nuclear Coun-
17 termeasures, shall have responsibility for the following:

18 (1) Securing the people, infrastructures, prop-
19 erty, resources, and systems in the United States
20 from acts of terrorism involving chemical, biological,
21 radiological, or nuclear weapons or other emerging
22 threats.

23 (2) Conducting a national scientific research
24 and development program to support the mission of
25 the Department, including developing national policy
26 for and coordinating the Federal Government's civil-



1 ian efforts to identify, devise, and implement sci-
2 entific, technological, and other countermeasures to
3 chemical, biological, radiological, nuclear, and other
4 emerging terrorist threats, including directing, fund-
5 ing, and conducting research and development relat-
6 ing to the same.

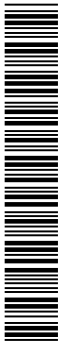
7 (3) Establishing priorities for, directing, fund-
8 ing, and conducting national research, development,
9 and procurement of technology and systems—

10 (A) for preventing the importation of
11 chemical, biological, radiological, nuclear, and
12 related weapons and material; and

13 (B) for detecting, preventing, protecting
14 against, and responding to terrorist attacks
15 that involve such weapons or material.

16 (4) Establishing guidelines for State and local
17 government efforts to develop and implement coun-
18 termeasures to threats of chemical, biological, radio-
19 logical, and nuclear terrorism, and other emerging
20 terrorist threats.

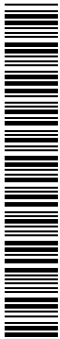
21 (5) Promulgating guidelines regarding the
22 health risks of short-, medium-, or long-term expo-
23 sure to acutely or sub-actuely toxic chemicals, bio-
24 logical, and radioactive materials that may be re-
25 leased into the environment as a consequence of a



1 major disaster that the Secretary determines con-
2 stitutes a homeland security event under section
3 1001. The Director of the Centers for Disease Con-
4 trol and Prevention shall provide the Under Sec-
5 retary with such information and analysis as may be
6 necessary for the Under Secretary to promulgate
7 guidelines under this section in the case of biological
8 materials.

9 (6) Providing for standardized and rapid data
10 collection and analysis and communication regarding
11 environmental risks following any major disaster
12 that the Secretary determines constitutes a home-
13 land security event under section 1001, in coordina-
14 tion with the Administrator of the Environmental
15 Protection Agency or the Director of the Centers for
16 Disease Control and Prevention (in the case of a re-
17 lease of biological agents) to coordinate all data col-
18 lection and monitoring and dissemination of analysis
19 regarding the release of pollutants and contaminants
20 (including biological agents) into the environment by
21 reason of any such disaster.

22 (7)(A) Providing awards of grants, contracts,
23 and cooperative agreements in consultation with the
24 Secretary of Health and Human Services to public
25 and nonprofit private entities for the purpose of col-



1 lecting public health data during and in the after-
2 math of public health emergencies, and conducting
3 research with respect to such data, in order to de-
4 velop medical therapies and other public health
5 strategies for assisting victims of such emergencies
6 in recovering from the emergencies; and

7 (B) Providing for the approval of applications
8 for awards under subparagraph (A) in advance of
9 public health emergencies in order that, upon the oc-
10 currence of such an emergency, the Under Secretary
11 can promptly begin disbursing amounts from the
12 awards and the recipients of the awards can prompt-
13 ly begin carrying out the purpose described in sub-
14 section (a).

15 **SEC. 302. FUNCTIONS TRANSFERRED.**

16 In accordance with title VIII, there shall be trans-
17 ferred to the Secretary the functions, personnel, assets,
18 and liabilities of the following:

19 (1) The select agent registration enforcement
20 programs and activities of the Department of Health
21 and Human Services, including the functions of the
22 Secretary of Health and Human Services relating
23 thereto.

24 (2) The following programs and activities of the
25 Department of Energy, including the functions of



1 the Secretary of Energy relating thereto (but not in-
2 cluding programs and activities relating to the stra-
3 tegic nuclear defense posture of the United States):

4 (A) The chemical and biological national
5 security and supporting programs and activities
6 of the non-proliferation and verification re-
7 search and development program.

8 (B) The nuclear smuggling programs and
9 activities, and other programs and activities di-
10 rectly related to homeland security, within the
11 proliferation detection program of the non-pro-
12 liferation and verification research and develop-
13 ment program, except that the programs and
14 activities described in this subparagraph may be
15 designated by the President either for transfer
16 to the Department or for joint operation by the
17 Secretary and the Secretary of Energy.

18 (C) The nuclear assessment program and
19 activities of the assessment, detection, and co-
20 operation program of the international mate-
21 rials protection and cooperation program.

22 (D) The energy security and assurance
23 program and activities.

24 (E) Such life sciences activities of the bio-
25 logical and environmental research program re-



1 lated to microbial pathogens as may be des-
2 ignated by the President for transfer to the De-
3 partment.

4 (F) The Environmental Measurements
5 Laboratory.

6 (G) The advanced scientific computing re-
7 search program and activities, and the intel-
8 ligence program and activities, at Lawrence
9 Livermore National Laboratory.

10 (3) The National Bio-Weapons Defense Anal-
11 ysis Center of the Department of Defense, including
12 the functions of the Secretary of Defense related
13 thereto.

14 **SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
15 **ACTIVITIES.**

16 (a) CERTAIN ACTIVITIES CARRIED OUT THROUGH
17 HHS.—(1) Except as the President may otherwise direct,
18 the Secretary shall carry out his civilian human health-
19 related biological, biomedical, and infectious disease de-
20 fense research and development (including vaccine re-
21 search and development) responsibilities through the De-
22 partment of Health and Human Services (including the
23 Public Health Service), under agreements with the Sec-
24 retary of Health and Human Services, and may transfer
25 funds to him in connection with such agreements.



1 (2) With respect to any responsibilities carried out
2 through the Department of Health and Human Services
3 under this subsection, the Secretary, in consultation with
4 the Secretary of Health and Human Services, shall have
5 the authority to establish the research and development
6 program, including the setting of priorities.

7 (b) TRANSFER OF FUNDS.—With respect to such
8 other research and development responsibilities under this
9 title, including health-related chemical, radiological, and
10 nuclear defense research and development responsibilities,
11 as he may elect to carry out through the Department of
12 Health and Human Services (including the Public Health
13 Service) (under agreements with the Secretary of Health
14 and Human Services) or through other Federal agencies
15 (under agreements with their respective heads), the Sec-
16 retary may transfer funds to the Secretary of Health and
17 Human Services, or to such heads, as the case may be.

18 **SEC. 304. TRANSFER OF PLUM ISLAND ANIMAL DISEASE**

19 **CENTER, DEPARTMENT OF AGRICULTURE.**

20 (a) TRANSFER REQUIRED.—In accordance with title
21 VIII, the Secretary of Agriculture shall transfer to the
22 Secretary of Homeland Security the Plum Island Animal
23 Disease Center of the Department of Agriculture, includ-
24 ing the assets and liabilities of the Center.



1 (b) CONTINUED DEPARTMENT OF AGRICULTURE AC-
2 CESS.—Upon the transfer of the Plum Island Animal Dis-
3 ease Center, the Secretary of Homeland Security and the
4 Secretary of Agriculture shall enter into an agreement to
5 ensure Department of Agriculture access to the center for
6 research, diagnostic, and other activities of the Depart-
7 ment of Agriculture.

8 **TITLE IV—BORDER AND**
9 **TRANSPORTATION SECURITY**

10 **SEC. 401. UNDER SECRETARY FOR BORDER AND TRANS-**
11 **PORTATION SECURITY.**

12 The Secretary, acting through the Under Secretary
13 for Border and Transportation Security, shall have re-
14 sponsibility for the following:

15 (1) Preventing the entry of terrorists and the
16 instruments of terrorism into the United States.

17 (2) Securing the borders, territorial waters,
18 ports, terminals, waterways, and air, land, and sea
19 transportation systems of the United States, includ-
20 ing managing and coordinating governmental activi-
21 ties at ports of entry.

22 (3) Administering the immigration and natu-
23 ralization laws of the United States, including the
24 rules governing the granting of visas or other forms
25 of permission, including parole, to enter the United



1 States to individuals who are not citizens or lawful
2 permanent residents thereof.

3 (4) Administering the customs laws of the
4 United States.

5 (5) Conducting the inspection and related ad-
6 ministrative functions of the Department of Agri-
7 culture transferred to the Secretary of Homeland
8 Security under section 404.

9 (6) In carrying out the foregoing responsibil-
10 ities, ensuring the speedy, orderly, and efficient flow
11 of lawful traffic and commerce.

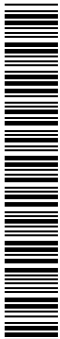
12 **SEC. 402. FUNCTIONS TRANSFERRED.**

13 In accordance with title VIII, there shall be trans-
14 ferred to the Secretary the functions, personnel, assets,
15 and liabilities of the following:

16 (1) The United States Customs Service of the
17 Department of the Treasury, including the functions
18 of the Secretary of the Treasury relating thereto.

19 (2) The Immigration and Naturalization Serv-
20 ice of the Department of Justice, including the func-
21 tions of the Attorney General relating thereto.

22 (3) The Visa Office of the Bureau of Consular
23 Affairs of the Department of State, including the
24 functions of the Secretary of State relating thereto.



1 (4) The Coast Guard of the Department of
2 Transportation, which shall be maintained as a dis-
3 tinct entity within the Department, including the
4 functions of the Secretary of Transportation relating
5 thereto.

6 (5) The Transportation Security Administration
7 of the Department of Transportation, including the
8 functions of the Secretary of Transportation, and of
9 the Under Secretary of Transportation for Security,
10 relating thereto.

11 (6) The Federal Protective Service of the Gen-
12 eral Services Administration, including the functions
13 of the Administrator of General Services relating
14 thereto.

15 **SEC. 403. VISA ISSUANCE.**

16 (a) IN GENERAL.—Notwithstanding section 104(a)
17 of the Immigration and Nationality Act (8 U.S.C.
18 1104(a)) or any other provision of law, and except as pro-
19 vided in subsection (b) of this section, the Secretary—

20 (1) shall be vested exclusively with all authori-
21 ties to issue regulations with respect to, administer,
22 and enforce the provisions of such Act, and of all
23 other immigration and nationality laws, relating to
24 the functions of consular officers of the United
25 States in connection with the granting or refusal of



1 visas, including the authority to refuse visa applica-
2 tions and develop programs of training for consular
3 officers, which authorities shall be exercised through
4 the Secretary of State, except that the Secretary
5 shall not have authority to alter or reverse the deci-
6 sion of a consular officer to refuse a visa to an alien;
7 and

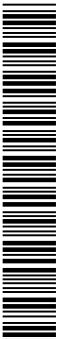
8 (2) shall have authority to confer or impose
9 upon any officer or employee of the United States,
10 with the consent of the head of the executive agency
11 under whose jurisdiction such officer or employee is
12 serving, any of the functions specified in paragraph
13 (1).

14 (b) AUTHORITY OF THE SECRETARY OF STATE.—

15 (1) The Secretary of State may direct a con-
16 sular officer to refuse a visa to an alien if the Sec-
17 retary of State considers such refusal necessary or
18 advisable in the foreign policy or security interests
19 of the United States.

20 (2) Nothing in this section shall be construed as
21 affecting the authorities of the Secretary of State
22 under the following provisions of law:

23 (A) Section 101(a)(15)(A) of the Immigra-
24 tion and Nationality Act (8 U.S.C.
25 1101(a)(15)(A)).



1 (B) Section 212(a)(3)(C) of the Immigra-
2 tion and Nationality Act (8 U.S.C.
3 1182(a)(3)(C)).

4 (C) Section 212(f) of the Immigration and
5 Nationality Act (8 U.S.C. 1182(f)).

6 (D) Section 237(a)(4)(C) of the Immigra-
7 tion and Nationality Act (8 U.S.C.
8 1227(a)(4)(C)).

9 (E) Section 104 of the Cuban Liberty and
10 Democratic Solidarity (LIBERTAD) Act of
11 1996 (22 U.S.C. 6034; Public Law 104–114).

12 (F) Section 613 of the Departments of
13 Commerce, Justice, and State, the Judiciary,
14 and Related Agencies Appropriations Act, 1999
15 (as contained in section 101(b) of division A of
16 Public Law 105–277 (Omnibus Consolidated
17 and Emergency Supplemental Appropriations
18 Act, 1999; 112 Stat. 2681; H.R. 4328; (Orig-
19 inally H.R. 4276) as amended by section 617 of
20 Public Law 106–553.

21 (G) Section 801 of H.R. 3427, the Admiral
22 James W. Nance and Meg Donovan Foreign
23 Relations Authorization Act, Fiscal Years 2000
24 and 2001, as enacted by reference in Public
25 Law 106–113.



1 (H) Section 568 of the Foreign Oper-
2 ations, Export Financing, and Related Pro-
3 grams Appropriations Act, 2002 (Public Law
4 107–115).

5 (c) ASSIGNMENT OF HOMELAND SECURITY EMPLOY-
6 EES TO DIPLOMATIC AND CONSULAR POSTS.—

7 (1) IN GENERAL.—The Secretary is authorized
8 to assign employees of the Department of Homeland
9 Security to any diplomatic and consular posts
10 abroad to perform the following functions:

11 (A) Provide expert advice and training to
12 consular officers regarding specific security
13 threats relating to the adjudication of individual
14 visa applications or classes of applications.

15 (B) Review any or all such applications
16 prior to their adjudication, either on the initia-
17 tive of the employee of the Department of
18 Homeland Security or upon request by a con-
19 sular officer or other person charged with adju-
20 dicating such applications.

21 (C) Conduct investigations with respect to
22 matters under the jurisdiction of the Secretary.

23 (2) PERMANENT ASSIGNMENT; PARTICIPATION
24 IN TERRORIST LOOKOUT COMMITTEE.—When appro-
25 priate, employees of the Department of Homeland

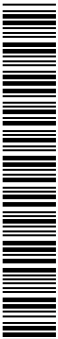


1 Security assigned to perform functions described in
2 paragraph (1) may be assigned permanently to over-
3 seas diplomatic or consular posts with country-spe-
4 cific or regional responsibility. If the Secretary so di-
5 rects, any such employee, when present at an over-
6 seas post, shall participate in the terrorist lookout
7 committee established under section 304 of the En-
8 hanced Border Security and Visa Entry Reform Act
9 of 2002 (8 U.S.C. 1733).

10 (3) TRAINING AND HIRING.—

11 (A) The Secretary shall ensure that any
12 employees of the Department of Homeland Se-
13 curity assigned to perform functions described
14 in paragraph (1) shall be provided all necessary
15 training to enable them to carry out such func-
16 tions, including training in foreign languages,
17 in conditions in the particular country where
18 each employee is assigned, and in other appro-
19 priate areas of study.

20 (B) Prior to assigning employees of the
21 Department to perform the functions described
22 in paragraph (1), the Secretary shall promul-
23 gate regulations establishing foreign language
24 proficiency requirements for employees of the
25 Department performing the functions described



1 in paragraph (1) and providing that preference
2 shall be given to individuals who meet such re-
3 quirements in hiring employees for the perform-
4 ance of such functions.

5 (C) The Secretary is authorized to use the
6 National Foreign Affairs Training Center, on a
7 reimbursable basis, to obtain the training de-
8 scribed in subparagraph (A).

9 (d) NO CREATION OF PRIVATE RIGHT OF ACTION.—
10 Nothing in this section shall be construed to create or au-
11 thorize a private right of action to challenge a decision
12 of a consular officer or other United States official or em-
13 ployee to grant or deny a visa.

14 (e) STUDY REGARDING USE OF FOREIGN NATION-
15 ALS.—

16 (1) IN GENERAL.—The Secretary of Homeland
17 Security shall conduct a study of the role of foreign
18 nationals in the granting or refusal of visas and
19 other documents authorizing entry of aliens into the
20 United States. The study shall address the following:

21 (A) The proper role, if any, of foreign na-
22 tionals in the process of rendering decisions on
23 such grants and refusals.

24 (B) Any security concerns involving the
25 employment of foreign nationals.



1 (C) Whether there are cost-effective alter-
2 natives to the use of foreign nationals.

3 (2) REPORT.—Not later than 2 years after the
4 date of the enactment of this Act, the Secretary
5 shall submit a report containing the findings of the
6 study conducted under paragraph (1) to the Com-
7 mittee on the Judiciary, the Committee on Inter-
8 national Relations, and the Committee on Govern-
9 ment Reform of the House of Representatives, and
10 the Committee on the Judiciary, the Committee on
11 Foreign Relations, and the Committee on Govern-
12 mental Affairs of the Senate.

13 (f) TERMINATION OF NONINTERVIEW PROGRAMS.—
14 All third-party screening, interview waiver, or other non-
15 interview programs in Saudi Arabia shall be terminated
16 upon enactment of this Act, and no such program may
17 be created after the date of enactment. On-site personnel
18 of the Department of Homeland Security shall review all
19 applications prior to adjudication. All individuals applying
20 for a visa in Saudi Arabia must be interviewed unless on-
21 site personnel of the Department of Homeland Security
22 determine, in writing, and pursuant to written guidelines
23 issued by the Secretary, that such individual is unlikely
24 to present a risk to homeland security. Such guidelines
25 shall be written within 30 days of the date of enactment.



1 **SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPEC-**
2 **TION FUNCTIONS OF THE DEPARTMENT OF**
3 **AGRICULTURE.**

4 (a) TRANSFER OF AGRICULTURAL IMPORT AND
5 ENTRY INSPECTION FUNCTIONS.—There shall be trans-
6 ferred to the Secretary of Homeland Security the func-
7 tions of the Secretary of Agriculture relating to agricul-
8 tural import and entry inspection activities under the laws
9 specified in subsection (b).

10 (b) COVERED ANIMAL AND PLANT PROTECTION
11 LAWS.—The laws referred to in subsection (a) are the fol-
12 lowing:

13 (1) The Act commonly known as the Virus-
14 Serum-Toxin Act (the eighth paragraph under the
15 heading “Bureau of Animal Industry” in the Act of
16 March 4, 1913; 21 U.S.C. 151 et seq.).

17 (2) Section 1 of the Act of August 31, 1922
18 (commonly known as the Honeybee Act; 7 U.S.C.
19 281).

20 (3) Title III of the Federal Seed Act (7 U.S.C.
21 1581 et seq.).

22 (4) The Plant Protection Act (7 U.S.C. 7701 et
23 seq.).

24 (5) The Animal Protection Act (subtitle E of
25 title X of Public Law 107–171; 7 U.S.C. 8301 et
26 seq.).



1 (6) The Lacey Act Amendments of 1981 (16
2 U.S.C. 3371 et seq.).

3 (7) Section 11 of the Endangered Species Act
4 of 1973 (16 U.S.C. 1540).

5 (c) EXCLUSION OF QUARANTINE ACTIVITIES.—For
6 purposes of this section, the term “functions” does not
7 include any quarantine activities carried out under the
8 laws specified in subsection (b).

9 (d) EFFECT OF TRANSFER.—

10 (1) COMPLIANCE WITH DEPARTMENT OF AGRI-
11 CULTURE REGULATIONS.—The authority transferred
12 pursuant to subsection (a) shall be exercised by the
13 Secretary of Homeland Security in accordance with
14 the regulations, policies, and procedures issued by
15 the Secretary of Agriculture regarding the adminis-
16 tration of the laws specified in subsection (b).

17 (2) RULEMAKING COORDINATION.—The Sec-
18 retary of Agriculture shall coordinate with the Sec-
19 retary of Homeland Security whenever the Secretary
20 of Agriculture prescribes regulations, policies, or
21 procedures for administering the laws specified in
22 subsection (b) at the locations referred to in sub-
23 section (a).

24 (3) EFFECTIVE ADMINISTRATION.—The Sec-
25 retary of Homeland Security, in consultation with



1 the Secretary of Agriculture, may issue such direc-
2 tives and guidelines as are necessary to ensure the
3 effective use of personnel of the Department of
4 Homeland Security to carry out the functions trans-
5 ferred pursuant to subsection (a).

6 (e) TRANSFER AGREEMENT.—

7 (1) AGREEMENT REQUIRED; REVISION.—Before
8 the end of the transition period, as defined in section
9 801(2), the Secretary of Agriculture and the Sec-
10 retary of Homeland Security shall enter into an
11 agreement to effectuate the transfer of functions re-
12 quired by subsection (a). The Secretary of Agri-
13 culture and the Secretary of Homeland Security may
14 jointly revise the agreement as necessary thereafter.

15 (2) REQUIRED TERMS.—The agreement re-
16 quired by this subsection shall specifically address
17 the following:

18 (A) The supervision by the Secretary of
19 Agriculture of the training of employees of the
20 Secretary of Homeland Security to carry out
21 the functions transferred pursuant to sub-
22 section (a).

23 (B) The transfer of funds to the Secretary
24 of Homeland Security under subsection (f).



1 (3) COOPERATION AND RECIPROCITY.—The
2 Secretary of Agriculture and the Secretary of Home-
3 land Security may include as part of the agreement
4 the following:

5 (A) Authority for the Secretary of Home-
6 land Security to perform functions delegated to
7 the Animal and Plant Health Inspection Service
8 of the Department of Agriculture regarding the
9 protection of domestic livestock and plants, but
10 not transferred to the Secretary of Homeland
11 Security pursuant to subsection (a).

12 (B) Authority for the Secretary of Agri-
13 culture to use employees of the Department of
14 Homeland Security to carry out authorities del-
15 egated to the Animal and Plant Health Inspec-
16 tion Service regarding the protection of domes-
17 tic livestock and plants.

18 (f) PERIODIC TRANSFER OF FUNDS TO DEPART-
19 MENT OF HOMELAND SECURITY.—

20 (1) TRANSFER OF FUNDS.—Out of funds col-
21 lected by fees authorized under sections 2508 and
22 2509 of the Food, Agriculture, Conservation, and
23 Trade Act of 1990 (21 U.S.C. 136, 136a), the Sec-
24 retary of Agriculture shall transfer, from time to
25 time in accordance with the agreement under sub-



1 section (e), to the Secretary of Homeland Security
2 funds for activities carried out by the Secretary of
3 Homeland Security for which such fees were col-
4 lected.

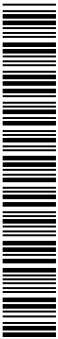
5 (2) LIMITATION.—The proportion of fees col-
6 lected pursuant to such sections that are transferred
7 to the Secretary of Homeland Security under this
8 subsection may not exceed the proportion of the
9 costs incurred by the Secretary of Homeland Secu-
10 rity to all costs incurred to carry out activities fund-
11 ed by such fees.

12 (g) TRANSFER OF DEPARTMENT OF AGRICULTURE
13 EMPLOYEES.—During the transition period, the Secretary
14 of Agriculture shall transfer to the Secretary of Homeland
15 Security not more than 3,200 full-time equivalent posi-
16 tions of the Department of Agriculture.

17 (h) PROTECTION OF INSPECTION ANIMALS.—Title V
18 of the Agricultural Risk Protection Act of 2000 (7 U.S.C.
19 2279e, 2279f) is amended—

20 (1) in section 501(a)—

21 (A) by inserting “or the Department of
22 Homeland Security” after “Department of Ag-
23 riculture”; and



1 (B) by inserting “or the Secretary of
2 Homeland Security” after “Secretary of Agri-
3 culture”;

4 (2) by striking “Secretary” each place it ap-
5 pears (other than in sections 501(a) and 501(e))
6 and inserting “Secretary concerned”; and

7 (3) by adding at the end of section 501 the fol-
8 lowing new subsection:

9 “(e) SECRETARY CONCERNED DEFINED.—In this
10 title, the term ‘Secretary concerned’ means—

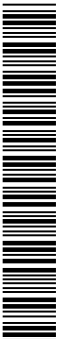
11 “(1) the Secretary of Agriculture, with respect
12 to an animal used for purposes of official inspections
13 by the Department of Agriculture; and

14 “(2) the Secretary of Homeland Security, with
15 respect to an animal used for purposes of official in-
16 spections by the Department of Homeland Secu-
17 rity.”.

18 **SEC. 405. INTERAGENCY COMMON RULES.**

19 The Secretary shall issue common rules with modal
20 units of the Department of Transportation with respect
21 to matters relating to transportation security, including
22 with respect to the following:

23 (1) Air transportation security matters under
24 the authority of the Federal Aviation Administra-
25 tion.



1 (2) Road, highway, and bridge security matters
2 under the authority of the Federal Highway Admin-
3 istration.

4 (3) Railroad security matters under the author-
5 ity of the Federal Railroad Administration.

6 (4) Mass transit security matters under the au-
7 thority of the Federal Transit Administration.

8 (5) Maritime transportation security matters
9 under the authority of the Maritime Administration.

10 **SEC. 406. IMMIGRATION FUNCTIONS.**

11 (a) ANNUAL REPORT.—

12 (1) IN GENERAL.—One year after the date of
13 the enactment of this Act, and each year thereafter,
14 the Secretary shall submit a report to the President,
15 to the Committees on the Judiciary and Government
16 Reform of the United States House of Representa-
17 tives, and to the Committees on the Judiciary and
18 Government Affairs of the Senate, on the impact the
19 transfer made by section 402(2) has had on immi-
20 gration functions.

21 (2) MATTER INCLUDED.—The report shall ad-
22 dress the following with respect to the period cov-
23 ered by the report:



1 (A) The aggregate number of all immigra-
2 tion applications and petitions received, and
3 processed, by the Department;

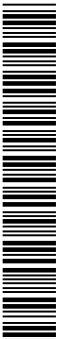
4 (B) Region-by-region statistics on the ag-
5 gregate number of immigration applications and
6 petitions filed by an alien (or filed on behalf of
7 an alien) and denied, and the reasons for such
8 denials, disaggregated by category of denial and
9 application or petition type.

10 (C) The quantity of backlogged immigra-
11 tion applications and petitions that have been
12 processed, the aggregate number awaiting proc-
13 essing, and a detailed plan for eliminating the
14 backlog.

15 (D) The median processing period for im-
16 migration applications and petitions,
17 disaggregated by application or petition type.

18 (E) The number and types of immigration-
19 related grievances filed with any official of the
20 Department, and if those grievances were re-
21 solved.

22 (F) Plans to address grievances and im-
23 prove immigration services.



1 (G) Whether immigration-related fees were
2 used consistent with legal requirements regard-
3 ing such use.

4 (H) Whether immigration-related questions
5 conveyed by customers to the Department
6 (whether conveyed in person, by telephone, or
7 by means of the Internet) were answered effec-
8 tively and efficiently.

9 (b) SENSE OF THE CONGRESS REGARDING IMMIGRA-
10 TION SERVICES.—It is the sense of the Congress that—

11 (1) the quality and efficiency of immigration
12 services rendered by the Federal Government should
13 be improved after the transfer made by section
14 402(2) takes effect; and

15 (2) the Secretary should undertake efforts to
16 guarantee that concerns regarding the quality and
17 efficiency of immigration services are addressed after
18 such effective date.

19 **SEC. 407. CITIZENSHIP AND IMMIGRATION SERVICES OM-**
20 **BUDSMAN.**

21 (a) IN GENERAL.—Within the Department, there
22 shall be a position of Citizenship and Immigration Services
23 Ombudsman (in this section referred to as the “Ombuds-
24 man”). The Ombudsman shall report directly to the Sec-
25 retary. The Ombudsman shall have a background in cus-



1 tomer service as well as immigration law. The Ombuds-
2 man may establish an office (other than the local offices
3 described in this section) within the Department, and hire
4 staff as appropriate, consistent with other Federal employ-
5 ment law .

6 (b) FUNCTIONS.—It shall be the function of the
7 Ombudsman—

8 (1) to assist individuals and employers in re-
9 solving problems with citizenship and immigration
10 services;

11 (2) to identify areas in which individuals and
12 employers have problems in dealing with citizenship
13 and immigration services personnel of the Depart-
14 ment;

15 (3) to the extent possible, to propose changes in
16 the administrative practices of the Department to
17 mitigate problems identified under paragraph (2);
18 and

19 (4) to identify potential legislative changes that
20 may be appropriate to mitigate such problems.

21 (c) ANNUAL REPORTS.—

22 (1) OBJECTIVES.—Not later than June 30 of
23 each calendar year, the Ombudsman shall report to
24 the Committees on the Judiciary and Government
25 Reform of the United States House of Representa-



1 tives, and the Committees on the Judiciary and Gov-
2 ernment Affairs of the Senate, on the objectives of
3 the Office of the Ombudsman for the fiscal year be-
4 ginning in such calendar year. Any such report shall
5 contain full and substantive analysis, in addition to
6 statistical information, and—

7 (A) shall identify the initiatives the Om-
8 budsman has taken on improving services and
9 responsiveness of the Department in providing
10 citizenship and immigration services;

11 (B) shall contain a summary of the most
12 pervasive and serious problems encountered by
13 individuals and employers, including a descrip-
14 tion of the nature of such problems;

15 (C) shall contain an inventory of the items
16 described in subparagraphs (A) and (B) for
17 which action has been taken and the result of
18 such action;

19 (D) shall contain an inventory of the items
20 described in subparagraphs (A) and (B) for
21 which action remains to be completed and the
22 period during which each item has remained on
23 such inventory;

24 (E) shall contain an inventory of the items
25 described in subparagraphs (A) and (B) for



1 which no action has been taken, the period dur-
2 ing which each item has remained on such in-
3 ventory, the reasons for the inaction, and shall
4 identify any official of the Department who is
5 responsible for such inaction;

6 (F) shall contain recommendations for
7 such administrative and legislative action as
8 may be appropriate to resolve problems encoun-
9 tered by individuals and employers, including
10 problems created by excessive backlogs in the
11 adjudication and processing of immigration ben-
12 efit petitions and applications; and

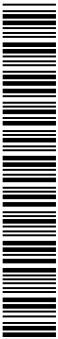
13 (G) shall include such other information as
14 the Ombudsman may deem advisable.

15 (2) REPORT TO BE SUBMITTED DIRECTLY.—

16 Each report required under this subsection shall be
17 provided directly to the committees described in
18 paragraph (1) without any prior review or comment
19 from the Secretary or any other officer or employee
20 of the Department or the Office of Management and
21 Budget.

22 (d) OTHER RESPONSIBILITIES.—The Ombudsman—

23 (1) shall monitor the coverage and geographic
24 allocation of local offices of the Ombudsman;



1 (2) shall develop guidance to be distributed to
2 all officers and employees of the Department per-
3 forming immigration functions outlining the criteria
4 for referral of inquiries to local offices of the Om-
5 budsman;

6 (3) shall ensure that the local telephone number
7 for each local office of the Ombudsman is published
8 and available to individuals and employers served by
9 the office;

10 (4) shall ensure that identifying information
11 about individuals and employers seeking assistance
12 is not disclosed by the Ombudsman or any employee
13 of the Ombudsman without the consent of the indi-
14 vidual or employer; and

15 (5) shall meet regularly with the Secretary (or
16 the Secretary's delegate) to identify serious immigra-
17 tion service problems and to present recommenda-
18 tions for such administrative action as may be ap-
19 propriate to resolve problems encountered by individ-
20 uals and employers.

21 (e) PERSONNEL ACTIONS.—

22 (1) IN GENERAL.—The Ombudsman shall have
23 the responsibility and authority—



1 (A) to appoint local ombudsmen and make
2 available at least 1 such ombudsman for each
3 State; and

4 (B) to evaluate and take personnel actions
5 (including dismissal) with respect to any em-
6 ployee of any local office of the Ombudsman
7 consistent with other Federal employment law.

8 (2) CONSULTATION.—The Ombudsman may
9 consult with the appropriate supervisory personnel of
10 the Department in carrying out the Ombudsman's
11 responsibilities under this subsection.

12 (f) RESPONSE OF RECOMMENDATIONS.—The Sec-
13 retary shall establish procedures requiring a formal re-
14 sponse to all recommendations submitted by the Ombuds-
15 man within 3 months after submission.

16 (g) OPERATION OF LOCAL OFFICES.—

17 (1) IN GENERAL.—Each local ombudsman—

18 (A) shall report to the Ombudsman or the
19 delegate thereof;

20 (B) may consult with the appropriate su-
21 pervisory personnel of the Department regard-
22 ing the daily operation of the local office of
23 such ombudsman;

24 (C) shall, at the initial meeting with any
25 individual or employer seeking the assistance of



1 such local office, notify such individual or em-
2 ployer that the local offices of the Ombudsman
3 operate independently of any other component
4 of the Department and report directly to the
5 Congress through the Ombudsman; and

6 (D) at the local ombudsman's discretion,
7 may determine not to disclose to any other com-
8 ponent of the Department contact with, or in-
9 formation provided by, such individual or em-
10 ployer.

11 (2) MAINTENANCE OF INDEPENDENT COMMU-
12 NICATIONS.—Each local office of the Ombudsman
13 shall maintain a phone, facsimile, and other means
14 of electronic communication access, and a post office
15 address, that is separate from those maintained by
16 any other component of the Department.

17 **SEC. 408. SEAPORT SECURITY FUNCTIONS.**

18 (a) TRANSFERS.—In addition to the other transfers
19 under this title, in accordance with title VIII there shall
20 be transferred to the Secretary the functions, personnel,
21 assets, and liabilities of the Department of Transportation
22 relating to port security that are authorized by the Ports
23 and Waterways Safety Act (33 U.S.C. 1221 et seq.), the
24 International Maritime and Port Security Act (46 App.



1 U.S.C. 1807 et seq.), and chapter 37 of title 46, United
2 States Code.

3 (b) REPORT.—Not later than 2 years after the date
4 of the enactment of this Act, the Secretary shall submit
5 to the Congress a report on whether or not efforts under-
6 taken on the development of contingency plans and proce-
7 dures to prevent or respond to acts of terrorism under sec-
8 tion 7 of the Ports and Waterways Safety Act (33 U.S.C.
9 1226) meet the following goals:

10 (1) PORT OF ORIGIN GOALS.—

11 (A) Increasing proactive policing of inter-
12 national cargo.

13 (B) Increasing inspection of arriving cargo
14 based on port of origin cargo screening capa-
15 bility and compliance with security standards.

16 (C) Increasing communications with for-
17 eign governments and recommend steps to im-
18 prove foreign port security and cargo screening.

19 (2) TRANSIT GOALS.—

20 (A) Developing an improved cargo identi-
21 fication and screening system for containerized
22 cargo.

23 (B) Developing standards to improve the
24 physical security of the cargo containers them-
25 selves, including standards for seals and locks.



1 (C) Developing a plan to extend the sea-
2 ward jurisdiction of the Coast Guard to a point
3 farther than three miles from shore.

4 (3) PORT OF ENTRY GOALS.—

5 (A) Developing an improved import cargo
6 information system enabling shippers and car-
7 riers of containerized cargo to provide import
8 cargo information 24 hours before the container
9 is loaded on a ship destined for the United
10 States.

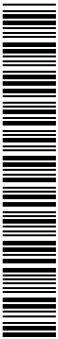
11 (B) Developing an improved system to re-
12 quire ocean carriers to provide crew and pas-
13 senger manifests in advance of a vessel's arrival
14 in the United States.

15 (4) PORT SECURITY TECHNICAL SECURITY
16 GOALS.—

17 (A) Conducting vulnerability assessments
18 at each seaport.

19 (B) Conducting regular mandatory security
20 meetings at each seaport between Federal,
21 State, and local law enforcement organizations,
22 the trade, and port authorities.

23 (C) Developing a plan that assigns first re-
24 sponder duties and responsibilities among Fed-
25 eral, State, and local government agencies and



1 sets minimum training, drills, and antiterrorism
2 action standards for vessel and facility per-
3 sonnel.

4 (D) Establishing a system of surveillance
5 to safeguard against and provide the earliest
6 possible notice of a terrorist act.

7 (E) Developing a system of standard secu-
8 rity cards to be used in identifying personnel
9 with access to sensitive areas.

10 (F) Developing standardized guidelines for
11 physical, procedural, and personnel security for
12 seaports.

13 (G) Developing a central database of the
14 individuals responsible for implementing
15 antiterrorism actions at each seaport.

16 (5) INSPECTIONS GOALS.—

17 (A) Increasing inspections based on each
18 ship's threat potential as assessed before it is
19 allowed to enter a United States port.

20 (B) Creating teams of specifically trained
21 inspectors to assess threats.

22 (C) Creating teams of specially trained in-
23 cident managers to manage identified threats.



1 (D) Developing a plan to consolidate fed-
2 eral inspection facilities and co-locate Federal
3 inspectors in joint facilities.

4 (E) Develop a plan to move remotely lo-
5 cated inspection facilities to the docks.

6 **TITLE V—EMERGENCY**
7 **PREPAREDNESS AND RESPONSE**

8 **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPARED-**
9 **NESS AND RESPONSE.**

10 The Secretary, acting through the Under Secretary
11 for Emergency Preparedness and Response, shall have re-
12 sponsibility for the following:

13 (1) Helping to ensure the preparedness of
14 emergency response providers for terrorist attacks,
15 major disasters, and other emergencies.

16 (2) With respect to the Nuclear Incident Re-
17 sponse Team (regardless of whether it is operating
18 as an organizational unit of the Department pursu-
19 ant to this title)—

20 (A) establishing standards and certifying
21 when those standards have been met;

22 (B) conducting joint and other exercises
23 and training and evaluating performance; and

24 (C) providing funds to the Department of
25 Energy and the Environmental Protection



1 Agency, as appropriate, for homeland security
2 planning, exercises and training, and equip-
3 ment.

4 (3) Providing the Federal Government's re-
5 sponse to terrorist attacks and major disasters,
6 including—

7 (A) managing such response;

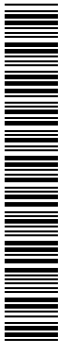
8 (B) directing the Domestic Emergency
9 Support Team, the Strategic National Stock-
10 pile, the National Disaster Medical System, and
11 (when operating as an organizational unit of
12 the Department pursuant to this title) the Nu-
13 clear Incident Response Team;

14 (C) overseeing the Metropolitan Medical
15 Response System; and

16 (D) coordinating other Federal response
17 resources in the event of a terrorist attack or
18 major disaster.

19 (4) Aiding the recovery from terrorist attacks
20 and major disasters.

21 (5) Building a comprehensive national incident
22 management system with Federal, State, and local
23 government personnel, agencies, and authorities, to
24 respond to such attacks and disasters.



1 (6) Consolidating existing Federal Government
2 emergency response plans into a single, coordinated
3 national response plan while maintaining the pro-
4 grammatic integrity of existing Federal-State-local
5 partnerships including under the FIRE Act and the
6 COPS program.

7 (7) Developing comprehensive programs for de-
8 veloping interoperative communications technology,
9 and helping to ensure that emergency response pro-
10 viders acquire such technology.

11 (8) Providing direct assistance with amounts
12 appropriated by the Congress to State and local
13 emergency responders through a block grant pro-
14 gram that—

15 (A) meets short- and long-term security
16 needs and complies with applicable laws;

17 (B) funds, among other activities, addi-
18 tional law enforcement, fire, public health and
19 emergency resources, improving cyber and in-
20 frastructure security, and devising a homeland
21 security plan; and

22 (C) provides that grants may be used to
23 cover costs incurred for eligible activities on or
24 after September 11, 2001, so as to allow local
25 communities a soft match of overtime and secu-



1 rity expenses incurred as a result of the Sep-
2 tember 11, 2001, terrorist attacks and Federal
3 directives to secure communities thereafter.

4 **SEC. 502. FUNCTIONS TRANSFERRED.**

5 In accordance with title VIII, there shall be trans-
6 ferred to the Secretary the functions, personnel, assets,
7 and liabilities of the following:

8 (1) The Federal Emergency Management Agen-
9 cy, including the functions of the Director of the
10 Federal Emergency Management Agency relating
11 thereto.

12 (2) The Office for Domestic Preparedness of
13 the Office of Justice Programs, including the func-
14 tions of the Attorney General relating thereto.

15 (3) The National Domestic Preparedness Office
16 of the Federal Bureau of Investigation, including the
17 functions of the Attorney General relating thereto.

18 (4) The Domestic Emergency Support Teams
19 of the Department of Justice, including the func-
20 tions of the Attorney General relating thereto.

21 (5) The Office of the Assistant Secretary for
22 Public Health Emergency Preparedness (including
23 the Office of Emergency Preparedness, the National
24 Disaster Medical System, and the Metropolitan Med-
25 ical Response System) of the Department of Health



1 and Human Services, including the functions of the
2 Secretary of Health and Human Services relating
3 thereto.

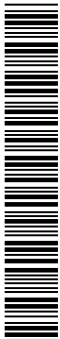
4 (6) The Strategic National Stockpile of the De-
5 partment of Health and Human Services, including
6 the functions of the Secretary of Health and Human
7 Services relating thereto.

8 **SEC. 503. NUCLEAR INCIDENT RESPONSE.**

9 (a) NUCLEAR INCIDENT RESPONSE TEAM.—At the
10 direction of the Secretary (in connection with an actual
11 or threatened terrorist attack, major disaster, or other
12 emergency), the Nuclear Incident Response Team shall
13 operate as an organizational unit of the Department.
14 While so operating, the Nuclear Incident Response Team
15 shall be subject to the direction, authority, and control of
16 the Secretary.

17 (b) DELIVERY OF POTASSIUM IODIDE.—In the event
18 of a terrorist attack, major disaster, or other emergency,
19 the Secretary shall devise a plan to deliver Potassium Io-
20 dide (KI) to the people for whom it is intended within 4
21 hours after exposure to radioactive iodines from a nuclear
22 power plant, and as expeditiously as possible to persons
23 beyond the immediate 20-mile radius of protection.

24 (c) COMMON INTERAGENCY RULES.—The Secretary
25 shall issue common rules with the Nuclear Regulatory



1 Commission with respect to matters relating to nuclear se-
2 curity.

3 (d) CONSTRUCTION.—Nothing in this title shall be
4 understood to limit the ordinary responsibility of the Sec-
5 retary of Energy, the Administrator of the Environmental
6 Protection Agency, and the Nuclear Regulatory Commis-
7 sion for organizing, training, equipping, and utilizing their
8 respective entities in the Nuclear Incident Response Team,
9 or (subject to the provisions of this title) from exercising
10 direction, authority, and control over them when they are
11 not operating as a unit of the Department.

12 **SEC. 504. DEFINITION.**

13 For purposes of this title, “nuclear incident response
14 team” means a resource that includes—

15 (1) those entities of the Department of Energy
16 that perform nuclear or radiological emergency sup-
17 port functions (including accident response, search
18 response, advisory, and technical operations func-
19 tions), radiation exposure functions at the medical
20 assistance facility known as Oak Ridge National
21 Laboratory, radiological assistance functions, and re-
22 lated functions;

23 (2) those entities of the Environmental Protec-
24 tion Agency that perform such support functions (in-



1 cluding radiological emergency response functions)
2 and related functions; and

3 (3) those entities of the Nuclear Regulatory
4 Commission that perform such support and related
5 functions.

6 **SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
7 **ACTIVITIES.**

8 (a) IN GENERAL.—Except as the President may oth-
9 erwise direct, the Secretary shall carry out the following
10 responsibilities through the Department of Health and
11 Human Services (including the Public Health Service),
12 under agreements with the Secretary of Health and
13 Human Services, and may transfer funds to such Sec-
14 retary in connection with such agreements:

15 (1) All biological, chemical, radiological, and
16 nuclear preparedness-related construction, renova-
17 tion, and enhancement of security for research and
18 development or other facilities owned or occupied by
19 the Department of Health and Human Services.

20 (2) All public health-related activities being car-
21 ried out by the Department of Health and Human
22 Services on the effective date of this Act (other than
23 activities under functions transferred by this Act to
24 the Department) to assist State and local govern-
25 ment personnel, agencies, or authorities, non-Federal



1 public and private health care facilities and pro-
2 viders, and public and non-profit health and edu-
3 cational facilities, to plan, prepare for, prevent, iden-
4 tify, and respond to biological, chemical, radiological,
5 and nuclear events and public health emergencies, by
6 means including direct services, technical assistance,
7 communications and surveillance, education and
8 training activities, and grants.

9 (b) PREPAREDNESS AND RESPONSE PROGRAM.—

10 With respect to any responsibilities carried out through
11 the Department of Health and Human Services under this
12 section, the Secretary, in consultation with the Secretary
13 of Health and Human Services, shall have the authority
14 to establish the preparedness and response program, in-
15 cluding the setting of priorities.

16 **SEC. 506. MINIMUM REQUIREMENTS FOR PRIVATE SECU-**
17 **RITY OFFICERS.**

18 (a) INCREASE OF GRANTS.—The Secretary shall in-
19 crease grants awarded by the Federal Emergency Manage-
20 ment Agency to a State for purposes other than emer-
21 gency relief by 10 percent if the Secretary has certified
22 that the State meets the requirements of subsection (b).

23 (b) MINIMUM REQUIREMENTS.—In order to be eligi-
24 ble under subsection (a), the following requirements shall



1 apply with respect to private security officers employed
2 within the State:

3 (1) Each private security officer shall receive 24
4 hours of training before any security assignment, an
5 additional 16 hours within 90 days of the initial se-
6 curity assignment, and an additional 8 hours of
7 training each year. All training described in this
8 paragraph shall be certified by the State.

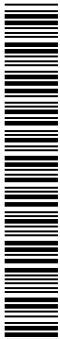
9 (2) The State shall perform criminal back-
10 ground checks on all private security officers, includ-
11 ing State and Federal name and fingerprint checks.

12 (3) No private security officer may work in the
13 State without a license that verifies that the officer
14 has completed the requirements of this subsection.

15 (4) The State shall have an advisory council re-
16 garding requirements for private security officers
17 representing various stakeholders, including private
18 security officers.

19 (5) The State shall maintain a registry of all li-
20 censed private security officers which shall be open
21 to public inquiry.

22 (6) The State shall establish enforcement mech-
23 anisms that include dedicated enforcement per-
24 sonnel, a complaint procedure open to any member
25 of the public, open record keeping, and the ability to



1 fine, suspend, and revoke private security officer li-
2 censes.

3 (7) Whistleblower protections shall be afforded
4 to private security officers in the State.

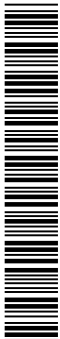
5 (c) PRIVATE SECURITY OFFICER DEFINED.—In this
6 section, the term “private security officer” means any in-
7 dividual working as a contract security officer or a propri-
8 etary security officer who—

9 (1) advertises as providing or performs body-
10 guard services or otherwise guards persons or prop-
11 erty;

12 (2) attempts to prevent theft or unlawful taking
13 of goods, wares, or merchandise; or

14 (3) attempts to prevent the misappropriation or
15 concealment of goods, wares, or merchandise.

16 (d) USER FEE.—As specified in subsection (b)(2), an
17 association of employers of private security officers, des-
18 ignated for the purposes of this section by the State Attor-
19 ney General, may submit fingerprints or other methods
20 of positive identification approved by the appropriate Fed-
21 eral authority to the appropriate Federal authority on be-
22 half of any applicant for a State license or certificate of
23 registration as a private security officer or employer of
24 private security officers. In response to such a submission,
25 the State Attorney General may, to the extent provided



1 by State law conforming to the requirements of the second
2 paragraph under the heading “Federal Bureau of Inves-
3 tigation” and the subheading “Salaries and Expenses” in
4 title II of Public Law 92–544 (86 Stat. 1115), exchange,
5 for licensing and employment purposes, identification and
6 criminal history records with the appropriate Federal au-
7 thority.

8 **TITLE VI—MANAGEMENT**

9 **SEC. 601. DEPUTY SECRETARY FOR MANAGEMENT.**

10 The Secretary, acting through the Deputy Secretary
11 for Management, shall have responsibility for the following
12 with respect to the Department:

13 (1) The budget, appropriations, expenditures of
14 funds, accounting, and finance.

15 (2) Procurement.

16 (3) Human resources and personnel.

17 (4) Information technology and communications
18 systems.

19 (5) Facilities, property, equipment, and other
20 material resources.

21 (6) Security for personnel, information tech-
22 nology and communications systems, facilities, prop-
23 erty, equipment, and other material resources.



1 (7) Identification and tracking of performance
2 measures relating to the responsibilities of the De-
3 partment.

4 (8) Grants and other assistance management
5 programs.

6 (9) The transition process, to ensure an effi-
7 cient and orderly transfer of functions and personnel
8 to the Department, including the development of a
9 transition plan.

10 (10) The conduct of internal audits and man-
11 agement analyses of the programs and activities of
12 the Department.

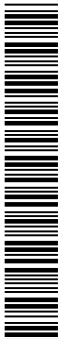
13 (11) Any other management duties that the
14 Secretary may designate.

15 **SEC. 602. CHIEF FINANCIAL OFFICER.**

16 Notwithstanding section 902(a)(1) of title 31, United
17 States Code, the Chief Financial Officer of the Depart-
18 ment shall report to the Secretary, or to the Deputy Sec-
19 retary for Management, as the Secretary may direct.

20 **SEC. 603. CHIEF INFORMATION OFFICER.**

21 Notwithstanding section 3506(a)(2) of title 44,
22 United States Code, the Chief Information Officer shall
23 report to the Secretary, or to the Deputy Secretary for
24 Management, as the Secretary may direct.



1 **SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS**
2 **AND CIVIL LIBERTIES.**

3 The Secretary shall establish in the Department an
4 Office for Civil Rights and Civil Liberties, the head of
5 which shall be the Director for Civil Rights and Civil Lib-
6 erties. The Director shall—

7 (1) review and assess information alleging
8 abuses of civil rights, civil liberties, and racial and
9 ethnic profiling by employees and officials of the De-
10 partment;

11 (2) make public through the Internet, radio, tel-
12 evision, or newspaper advertisements information on
13 the responsibilities and functions of, and how to con-
14 tact, the Office; and

15 (3) submit to the President of the Senate, the
16 Speaker of the House of Representatives, and the
17 appropriate committees and subcommittees of the
18 Congress on a semiannual basis a report on the im-
19 plementation of this section, including the use of
20 funds appropriated to carry out this section, and de-
21 tailing any allegations of abuses described in para-
22 graph (1) and any actions taken by the Department
23 in response to such allegations.



1 **TITLE VII—COORDINATION; IN-**
2 **SPECTOR GENERAL; UNITED**
3 **STATES SECRET SERVICE;**
4 **GENERAL PROVISIONS; AC-**
5 **QUISITIONS; INFORMATION**
6 **SHARING; PROPERTY**
7 **Subtitle A—Coordination With**
8 **Non-Federal Entities**

9 **SEC. 701. RESPONSIBILITIES.**

10 In discharging his responsibilities relating to coordi-
11 nation (including the provision of training and equipment)
12 with State and local government personnel, agencies, and
13 authorities, with the private sector, and with other enti-
14 ties, the responsibilities of the Secretary shall include—

15 (1) coordinating with State and local govern-
16 ment personnel, agencies, and authorities, and with
17 the private sector, to ensure adequate planning,
18 equipment, training, and exercise activities;

19 (2) coordinating and, as appropriate, consoli-
20 dating, the Federal Government's communications
21 and systems of communications relating to homeland
22 security with State and local government personnel,
23 agencies, and authorities, the private sector, other
24 entities, and the public;



1 (3) directing and supervising grant programs of
2 the Federal Government for State and local govern-
3 ment emergency response providers; and

4 (4) distributing or, as appropriate, coordinating
5 the distribution of, warnings and information to
6 State and local government personnel, agencies, and
7 authorities and to the public.

8 **SEC. 702. INTERGOVERNMENTAL COORDINATING COUNCIL.**

9 (a) ESTABLISHMENT AND PURPOSES.—The Sec-
10 retary shall establish an Intergovernmental Coordinating
11 Council to serve as an ongoing advisory forum for pro-
12 moting effective coordination and cooperation among Fed-
13 eral, State, and local governments on matters relevant to
14 the work of the Department. The subjects to be addressed
15 by the Council shall include—

16 (1) ensuring that State and local officials have
17 the information they need to prepare for and re-
18 spond to homeland security threats;

19 (2) ensuring the greatest possible coordination
20 and consistent operation of Federal homeland secu-
21 rity programs and activities;

22 (3) ensuring that State and local governments
23 provide the greatest cooperation and support for the
24 work of the Department and other Federal agencies
25 with respect to homeland security;



1 (4) ensuring that the needs and perspectives of
2 State and local government officials are integrated
3 into all relevant aspects of the homeland security
4 strategies and work of the Department and other
5 Federal agencies; and

6 (5) such other subjects as the Chair or Vice
7 Chair of the Council may suggest.

8 (b) CHAIR AND VICE CHAIR.—The Secretary shall
9 chair the Council and shall designate an official of a State
10 or local government to serve as Vice Chair of the Council.

11 (c) COMPOSITION.—The Council shall consist of offi-
12 cials of State and local governments as well as such offi-
13 cials of the Department and of other Federal agencies as
14 the Secretary designates. The Secretary shall determine
15 the size and composition of the Council in accordance with
16 the criteria set forth in this subsection and in consultation
17 with the Vice Chair. With respect to State and local gov-
18 ernment members, the Council shall be representative of—

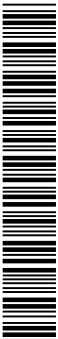
19 (1) the full range of emergency response pro-
20 viders;

21 (2) the geographical regions of the country;

22 (3) different levels and sizes of governments;

23 and

24 (4) jurisdictions that face different homeland
25 security threats.



1 (d) MEETINGS.—The Council shall hold regular
2 meetings at such times and locations as the Secretary de-
3 termines, in consultation with the Vice Chair.

4 (e) DEFINITION OF STATE.—For the purposes of this
5 section, “State” includes the District of Columbia, Puerto
6 Rico, the Virgin Islands, Guam, American Samoa, and the
7 Commonwealth of the Northern Mariana Islands.

8 **Subtitle B—Inspector General**

9 **SEC. 710. AUTHORITY OF THE SECRETARY.**

10 (a) IN GENERAL.—Notwithstanding the last two sen-
11 tences of section 3(a) of the Inspector General Act of
12 1978, the Inspector General shall be under the authority,
13 direction, and control of the Secretary with respect to au-
14 dits or investigations, or the issuance of subpoenas, that
15 require access to information concerning—

16 (1) intelligence, counterintelligence, or
17 counterterrorism matters;

18 (2) ongoing criminal investigations or pro-
19 ceedings;

20 (3) undercover operations;

21 (4) the identity of confidential sources, includ-
22 ing protected witnesses;

23 (5) other matters the disclosure of which would,
24 in the Secretary’s judgment, constitute a serious
25 threat to the protection of any person or property



1 authorized protection by section 3056 of title 18,
2 United States Code, section 202 of title 3 of such
3 Code, or any provision of the Presidential Protection
4 Assistance Act of 1976; or

5 (6) other matters the disclosure of which would,
6 in the Secretary's judgment, constitute a serious
7 threat to national security.

8 (b) PROHIBITION OF CERTAIN INVESTIGATIONS.—

9 With respect to the information described in subsection
10 (a), the Secretary may prohibit the Inspector General
11 from carrying out or completing any audit or investigation
12 or from issuing any subpoena, or may delay the issuance
13 of any report by the Inspector General, after the Inspector
14 General has decided to initiate, carry out, or complete
15 such audit or investigation, issue such subpoena, or issue
16 such report, if the Secretary determines that such prohibi-
17 tion or delay, respectively, is necessary to prevent the dis-
18 closure of any information described in subsection (a), to
19 preserve the national security, or to prevent a significant
20 impairment to the interests of the United States.

21 (c) NOTIFICATIONS REQUIRED.—

22 (1) NOTIFICATION BY SECRETARY.—The Sec-
23 retary shall, within 7 days after any exercise of au-
24 thority under subsection (b), transmit a written
25 statement of the reasons for the exercise of such au-



1 thority to the President of the Senate, the Speaker
2 of the House of Representatives, the Committee on
3 Government Reform of the House of Representa-
4 tives, and the Committee on Governmental Affairs of
5 the Senate.

6 (2) NOTIFICATION BY INSPECTOR GENERAL.—

7 The Inspector General shall provide written notifica-
8 tion to the Committee on Government Reform of the
9 House of Representatives and the Committee on
10 Governmental Affairs of the Senate of any exercise
11 of authority by the Secretary under subsection (b)
12 by not later than 7 days after receiving notice of
13 such exercise of authority.

14 (d) ACCESS TO INFORMATION BY CONGRESS.—The
15 exercise of authority by the Secretary described in sub-
16 section (b) should not be construed as limiting the right
17 of Congress or any committee of Congress to access any
18 information it seeks.

19 (e) OVERSIGHT RESPONSIBILITY—The Inspector
20 General Act of 1978 (5 U.S.C. App.) is further amended
21 by inserting after section 8I the following:

22 “SPECIAL PROVISIONS CONCERNING THE DEPARTMENT
23 OF HOMELAND SECURITY

24 “SEC. 8J. Notwithstanding any other provision of
25 law, in carrying out the duties and responsibilities speci-
26 fied in this Act, the Inspector General of the Department



1 of Homeland Security shall have oversight responsibility
2 for the internal investigations performed by the Office of
3 Internal Affairs of the United States Customs Service and
4 the Office of Inspections of the United States Secret Serv-
5 ice. The head of each such office shall promptly report
6 to the Inspector General the significant activities being
7 carried out by such office.”.

8 **Subtitle C—United States Secret**
9 **Service**

10 **SEC. 720. FUNCTIONS TRANSFERRED.**

11 In accordance with title VIII, there shall be trans-
12 ferred to the Secretary the functions, personnel, assets,
13 and liabilities of the United States Secret Service, which
14 shall be maintained as a distinct entity within the Depart-
15 ment, including the functions of the Secretary of the
16 Treasury relating thereto.

17 **Subtitle D—General Provisions**

18 **SEC. 730. HUMAN RESOURCE MANAGEMENT.**

19 (a) **AUTHORITY TO ADJUST PAY SCHEDULES.—**

20 (1) **IN GENERAL.—**Notwithstanding any provi-
21 sion of title 5, United States Code, the Secretary
22 may, under regulations prescribed jointly with the
23 Director of the Office of Personnel Management,
24 provide for such adjustments in rates of basic pay
25 as may be necessary to address inequitable pay dis-



1 parities among employees within the Department
2 performing similar work in similar circumstances.

3 (2) APPLICABILITY.—No authority under para-
4 graph (1) may be exercised with respect to any em-
5 ployee who serves in—

6 (A) an Executive Schedule position under
7 subchapter II of chapter 53 of title 5, United
8 States Code; or

9 (B) a position for which the rate of basic
10 pay is fixed in statute by reference to a section
11 or level under subchapter II of chapter 53 of
12 such title 5.

13 (3) LIMITATIONS.—Nothing in this subsection
14 shall constitute authority—

15 (A) to fix pay at a rate greater than the
16 maximum amount of cash compensation allow-
17 able under section 5307 of title 5, United
18 States Code, in a year; or

19 (B) to exempt any employee from the ap-
20 plication of such section 5307.

21 (4) SUNSET PROVISION.—Effective 5 years
22 after the effective date of this Act, all authority to
23 issue regulations under this subsection (including
24 regulations which would modify, supersede, or termi-



1 nate any regulations previously issued under this
2 subsection) shall cease to be available.

3 (b) SUSPENSION AND REMOVAL OF EMPLOYEES IN
4 THE INTERESTS OF NATIONAL SECURITY.—The Sec-
5 retary shall establish procedures consistent with section
6 7532 of title 5, United States Code, to provide for the
7 suspension and removal of employees of the Department
8 when necessary in the interests of national security or
9 homeland security. Such regulations shall provide for writ-
10 ten notice, hearings, and review similar to that provided
11 by such section 7532.

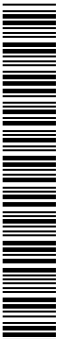
12 (c) DEMONSTRATION PROJECT.—

13 (1) IN GENERAL.—Not later than 5 years after
14 the effective date of this Act, the Secretary shall
15 submit to Congress a proposal for a demonstration
16 project, the purpose of which shall be to help attain
17 a human resources management system which in the
18 judgment of the Secretary is necessary in order to
19 enable the Department best to carry out its mission.

20 (2) REQUIREMENTS.—The proposal shall—

21 (A) ensure that veterans' preference and
22 whistleblower protection rights are retained;

23 (B) ensure that existing collective bar-
24 gaining agreements and rights under chapter



1 71 of title 5, United States Code, remain unaf-
2 fected;

3 (C) ensure the availability of such meas-
4 ures as may be necessary in order to allow the
5 Department to recruit and retain the best per-
6 sons possible to carry out its mission;

7 (D) include one or more performance ap-
8 praisal systems which shall—

9 (i) provide for periodic appraisals of
10 the performance of covered employees;

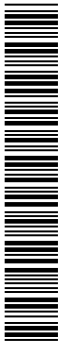
11 (ii) provide for meaningful participa-
12 tion of covered employees in the establish-
13 ment of employee performance plans; and

14 (iii) use the results of performance
15 appraisals as a basis for rewarding, reduc-
16 ing in grade, retaining, and removing cov-
17 ered employees; and

18 (E) contain recommendations for such leg-
19 islation or other actions by Congress as the
20 Secretary considers necessary.

21 (3) DEFINITION OF A COVERED EMPLOYEE.—

22 For purposes of paragraph (2)(D), the term “cov-
23 ered employee” means a supervisor or management
24 official (as defined in paragraphs (10) and (11) of
25 section 7103(a) of title 5, United States Code, re-



1 spectively) who occupies a position within the De-
2 partment which is in the General Schedule.

3 (d) MERIT SYSTEM PRINCIPLES.—All authorities
4 under subsections (a) and (b) shall be exercised in a man-
5 ner, and all personnel management flexibilities or authori-
6 ties proposed under subsection (c) shall be, consistent with
7 merit system principles under section 2301 of title 5,
8 United States Code.

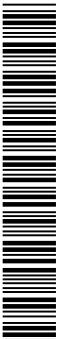
9 (e) REMEDIES FOR RETALIATION AGAINST WHIS-
10 TLEBLOWERS.—

11 Section 7211 of title 5, United States Code, is
12 amended—

13 (1) by inserting “(a)” before “The right”; and

14 (2) by adding at the end the following:

15 “(b) Any employee aggrieved by a violation of sub-
16 section (a) may bring a civil action in the appropriate
17 United States district court, within 3 years after the date
18 on which such violation occurs, against any agency, orga-
19 nization, or other person responsible for the violation, for
20 lost wages and benefits, reinstatement, costs and attorney
21 fees, compensatory damages, and equitable, injunctive, or
22 any other relief that the court considers appropriate. Any
23 such action shall, upon request of the party bringing the
24 action, be tried by the court with a jury.



1 “(c) The same legal burdens of proof in proceedings
2 under subsection (b) shall apply as under sections
3 1214(b)(4)(B) and 1221(e) in the case of an alleged pro-
4 hibited personnel practice described in section 2302(b)(8).

5 “(d) For purposes of this section, the term ‘employee’
6 means an employee (as defined by section 2105) and any
7 individual performing services under a personal services
8 contract with the Government (including as an employee
9 of an organization).”.

10 (f) NONREDUCTION IN PAY.—Nothing in this section
11 shall, with respect to any employee who is transferred to
12 the Department pursuant to this Act, constitute authority
13 to reduce the rate of basic pay (including any com-
14 parability pay) payable to such employee below the rate
15 last payable to such employee before the date on which
16 such employee is so transferred.

17 **SEC. 731. LABOR-MANAGEMENT RELATIONS.**

18 (a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

19 (1) IN GENERAL.—No agency or subdivision of
20 an agency which is transferred to the Department
21 pursuant to this Act shall be excluded from the cov-
22 erage of chapter 71 of title 5, United States Code,
23 as a result of any order issued under section
24 7103(b)(1) of such title 5 after June 18, 2002.



1 (2) EXCLUSIONS ALLOWABLE.—Nothing in
2 paragraph (1) shall affect the effectiveness of any
3 order to the extent that such order excludes any por-
4 tion of an agency or subdivision of an agency as to
5 which—

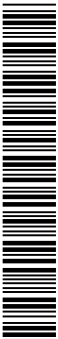
6 (A) recognition as an appropriate unit has
7 never been conferred for purposes of chapter 71
8 of such title 5; or

9 (B) any such recognition has been revoked
10 or otherwise terminated as a result of a deter-
11 mination under subsection (b)(1).

12 (b) PROVISIONS RELATING TO BARGAINING
13 UNITS.—

14 (1) LIMITATION RELATING TO APPROPRIATE
15 UNITS.—Each unit which is recognized as an appro-
16 priate unit for purposes of chapter 71 of title 5,
17 United States Code, as of the day before the effec-
18 tive date of this Act (and any subdivision of any
19 such unit) shall, if such unit (or subdivision) is
20 transferred to the Department pursuant to this Act,
21 continue to be so recognized for such purposes,
22 unless—

23 (A) the mission and responsibilities of such
24 unit (or subdivision) materially change; and



1 (B) a majority of the employees within
2 such unit (or subdivision) have as their primary
3 duty intelligence, counterintelligence, or inves-
4 tigative work directly related to terrorism inves-
5 tigation.

6 (2) LIMITATION RELATING TO POSITIONS OR
7 EMPLOYEES.—No position or employee within a unit
8 (or subdivision of a unit) as to which continued rec-
9 ognition is given in accordance with paragraph (1)
10 shall be excluded from such unit (or subdivision), for
11 purposes of chapter 71 of such title 5, unless the
12 primary job duty of such position or employee—

13 (A) materially changes; and

14 (B) consists of intelligence, counterintel-
15 ligence, or investigative work directly related to
16 terrorism investigation.

17 In the case of any positions within a unit (or sub-
18 division) which are first established on or after the
19 effective date of this Act and any employees first ap-
20 pointed on or after such date, the preceding sentence
21 shall be applied disregarding subparagraph (A).

22 (c) COORDINATION RULE.—No other provision of
23 this Act or of any amendment made by this Act may be
24 construed or applied in a manner so as to limit, supersede,
25 or otherwise affect the provisions of this section, except



1 to the extent that it does so by specific reference to this
2 section.

3 **SEC. 732. REPORTING REQUIREMENTS.**

4 (a) BIENNIAL REPORTS.—Every 2 years the Sec-
5 retary shall submit to Congress—

6 (1) a report assessing the resources and re-
7 quirements of executive agencies relating to border
8 security and emergency preparedness issues;

9 (2) a report certifying the preparedness of the
10 United States to prevent, protect against, and re-
11 spond to natural disasters, cyber attacks, and inci-
12 dents involving weapons of mass destruction; and

13 (3) a report assessing the emergency prepared-
14 ness of each State, including an assessment of each
15 State's coordination with the Department with re-
16 spect to the responsibilities specified in section 501.

17 (b) ADDITIONAL REPORT.—Not later than 1 year
18 after the effective date of this Act, the Secretary shall sub-
19 mit to Congress a report—

20 (1) assessing the progress of the Department
21 in—

22 (A) implementing this Act; and

23 (B) ensuring the core functions of each en-
24 tity transferred to the Department are main-
25 tained and strengthened; and



1 (2) recommending any conforming changes in
2 law necessary as a result of the enactment and im-
3 plementation of this Act.

4 **SEC. 733. REQUIREMENT TO DEVELOP COMPREHENSIVE**
5 **RISK MANAGEMENT ASSESSMENT AND HOME-**
6 **LAND SECURITY STRATEGY.**

7 (a) REQUIREMENT TO DEVELOP STRATEGY.—The
8 President shall develop a comprehensive strategy for
9 homeland security under which Federal, State, and local
10 government organizations coordinate and cooperate to
11 meet homeland security objectives.

12 (b) COMPONENTS OF STRATEGY.—The homeland se-
13 curity strategy required to be developed under subsection
14 (a) shall include the following components:

15 (1) Identification of specific homeland security
16 threats based upon the results of the assessment
17 under subsection (c).

18 (2) Development of a specific strategy with re-
19 spect to antiterrorism activities and consequence
20 management that includes specific, measurable ob-
21 jectives by which the efficacy of the execution of the
22 strategy may be determined.

23 (3) Identification of the executive departments,
24 agencies, and other organizations that should play a



1 role in protecting homeland security and specifica-
2 tion of the role of each such organization.

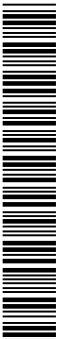
3 (4) Providing for the selective use of personnel
4 and assets of the Armed Forces in circumstances in
5 which those personnel and assets would provide
6 unique capability and could be used without infring-
7 ing on the civil liberties of the people of the United
8 States.

9 (5) Optimization of the use of intelligence as-
10 sets and capabilities, including improvement of the
11 processes by which intelligence information is pro-
12 vided to State and local governments.

13 (6) Providing for augmentation of existing med-
14 ical response capability and equipment stockpiles at
15 the Federal, State, and local levels.

16 (7) Development of a multiyear plan for phased
17 implementation of the strategy and a comprehensive
18 projected budget.

19 (c) REQUIREMENT TO DEVELOP RISK ASSESS-
20 MENT.—The President shall conduct a comprehensive
21 threat and risk assessment with respect to homeland secu-
22 rity to be used as the basis for the identification of specific
23 homeland security threats for purposes of subsection
24 (b)(1). Not later than six months after the enactment of
25 this Act, and annually thereafter, the President shall sub-



1 mit to Congress a comprehensive, national-level risk man-
2 agement assessment, which shall be submitted in unclassi-
3 fied form to the maximum extent possible, with a classified
4 annex, if necessary.

5 (d) COMPONENTS OF RISK ASSESSMENT.—The as-
6 sessment required to be developed under subsection (c)
7 shall include the following components:

8 (1) A description of the most significant threats
9 to the United States, including military, terrorist,
10 State, non-State, foreign, domestic, conventional,
11 and unconventional threats.

12 (2) A description of the most significant
13 vulnerabilities of the United States, including those
14 relating to population and infrastructure.

15 (3) A prioritization of the most significant risks
16 to the United States, based on the likelihood of the
17 threats identified under subsection (b)(1) and the
18 potential damage they could cause by exploiting
19 vulnerabilities identified under subsection (b)(2).

20 (e) PARTICIPATION OF EXECUTIVE AGENCIES.—The
21 President shall direct the participation of any executive
22 agencies, departments, or offices to develop the assess-
23 ment required in subsection (c), including the provision
24 of all necessary intelligence and other information.



1 **SEC. 734. MILITARY ACTIVITIES.**

2 Except as specifically provided in this Act, nothing
3 in this Act shall confer upon the Secretary any authority
4 to engage in warfighting, the military defense of the
5 United States, or other traditional military activities.

6 **SEC. 735. REORGANIZATION; TRANSFER.**

7 (a) **ALLOCATION OF FUNCTIONS.**—The Secretary is
8 authorized to allocate or reallocate functions among the
9 officers of the Department, and to establish, consolidate,
10 alter, or discontinue such organizational units within the
11 Department, as the Secretary may deem necessary or ap-
12 propriate, but such authority does not extend to the aboli-
13 tion of any entity established or required to be maintained
14 as a distinct entity by this Act.

15 (b) **TRANSFER OF APPROPRIATIONS.**—Except as oth-
16 erwise specifically provided by law, not to exceed five per-
17 cent of any appropriation available to the Secretary in any
18 fiscal year may be transferred between such appropria-
19 tions, except that not less than fifteen days' notice shall
20 be given to the Committees on Appropriations of the Sen-
21 ate and House of Representatives before any such transfer
22 is made.

23 (c) **LIMITATION.**—Notwithstanding any other provi-
24 sion of this section, and except as otherwise specifically
25 provided in this Act, the Secretary may not abolish any
26 entity that is transferred to the Department, or terminate



1 any function that is transferred to the Secretary, the De-
2 partment, or any of the personnel of the Department, if
3 such entity or function, respectively, is established or re-
4 quired by statute.

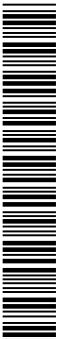
5 **SEC. 736. MISCELLANEOUS PROVISIONS.**

6 (a) SEAL.—The Department shall have a seal, whose
7 design is subject to the approval of the President.

8 (b) GIFTS, DEVISES, AND BEQUESTS.—With respect
9 to the Department, the Secretary shall have the same au-
10 thorities that the Attorney General has with respect to the
11 Department of Justice under section 524(d) of title 28,
12 United States Code.

13 (c) PARTICIPATION OF MEMBERS OF THE ARMED
14 FORCES.—With respect to the Department, the Secretary
15 shall have the same authorities that the Secretary of
16 Transportation has with respect to the Department of
17 Transportation under section 324 of title 49, United
18 States Code.

19 (d) REDELEGATION OF FUNCTIONS.—Unless other-
20 wise provided in the delegation or by law, any function
21 delegated under this Act may be redelegated to any subor-
22 dinate.



1 **SEC. 737. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated for each of
3 fiscal years 2003 through 2007 such sums as maybe nec-
4 essary to carry out this Act.

5 **Subtitle E—Acquisitions**

6 **SEC. 740. RESEARCH AND DEVELOPMENT PROJECTS.**

7 (a) **AUTHORITY.**—During the five-year period fol-
8 lowing the effective date of this Act, the Secretary may
9 carry out a pilot program under which the Secretary may
10 exercise the following authorities:

11 (1)(A) In carrying out basic, applied, and ad-
12 vanced research and development projects for re-
13 sponse to existing or emerging terrorist threats, the
14 Secretary may exercise the same authority (subject
15 to the same limitations and conditions) with respect
16 to such research and projects as the Secretary of
17 Defense may exercise under section 2371 of title 10,
18 United States Code (except for subsections (b) and
19 (f) of such section), after making a determination
20 that—

21 (i) the use of a contract, grant, or coopera-
22 tive agreement for such projects is not feasible
23 or appropriate; and

24 (ii) use of other authority to waive Federal
25 procurement laws or regulations would not be



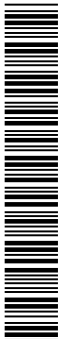
1 feasible or appropriate to accomplish such
2 projects.

3 (B) The annual report required under sub-
4 section (h) of such section 2371, as applied to the
5 Secretary by this paragraph, shall be submitted to
6 the President of the Senate and the Speaker of the
7 House of Representatives.

8 (2)(A) Under the authority of paragraph (1)
9 and subject to the limitations of such paragraph, the
10 Secretary may carry out prototype projects, in ac-
11 cordance with the requirements and conditions pro-
12 vided for carrying out prototype projects under sec-
13 tion 845 of the National Defense Authorization Act
14 for Fiscal Year 1994 (Public Law 103-160; 10
15 U.S.C. 2371 note).

16 (B) In applying the authorities of such section
17 845—

18 (i) subsection (c) thereof shall apply with
19 respect to prototype projects under this para-
20 graph, except that in applying such subsection
21 any reference in such subsection to the Comp-
22 troller General shall be deemed to refer to the
23 Comptroller General and the Inspector General
24 of the Department; and



1 (ii) the Secretary shall perform the func-
2 tions of the Secretary of Defense under sub-
3 section (d) thereof.

4 (b) REPORT.—Not later than one year after the effec-
5 tive date of this Act, and annually thereafter, the Comp-
6 troller General shall report to the Committee on Govern-
7 ment Reform of the House of Representatives and the
8 Committee on Governmental Affairs of the Senate on—

9 (1) whether use of the authorities described in
10 subsection (a) attracts nontraditional Government
11 contractors and results in the acquisition of needed
12 technologies; and

13 (2) if such authorities were to be made perma-
14 nent, whether additional safeguards are needed with
15 respect to the use of such authorities.

16 (c) DEFINITION OF NONTRADITIONAL GOVERNMENT
17 CONTRACTOR.—In this section, the term “nontraditional
18 Government contractor” has the same meaning as the
19 term “nontraditional defense contractor” as defined in
20 section 845(e) of the National Defense Authorization Act
21 for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C.
22 2371 note).

23 **SEC. 741. PERSONAL SERVICES.**

24 The Secretary—



1 (1) may procure the temporary or intermittent
2 services of experts or consultants (or organizations
3 thereof) in accordance with section 3109 of title 5,
4 United States Code; and

5 (2) may, whenever necessary due to an urgent
6 homeland security need, procure temporary (not to
7 exceed 1 year) or intermittent personal services, in-
8 cluding the services of experts or consultants (or or-
9 ganizations thereof), without regard to the pay limi-
10 tations of such section 3109.

11 **SEC. 742. SPECIAL STREAMLINED ACQUISITION AUTHOR-**
12 **ITY.**

13 (a) **AUTHORITY.**—(1) The Secretary may use the au-
14 thorities set forth in this section with respect to any pro-
15 curement made during the period beginning on the effec-
16 tive date of this Act and ending September 30, 2007, if
17 the Secretary determines in writing that the mission of
18 the Department (as described in section 101) would be
19 seriously impaired without the use of such authorities.

20 (2) The authority to make the determination de-
21 scribed in paragraph (1) may not be delegated by the Sec-
22 retary to an officer of the Department who is not ap-
23 pointed by the President with the advice and consent of
24 the Senate.



1 (3) Not later than the date that is seven days after
2 the date of any determination under paragraph (1), the
3 Secretary shall submit to the Committee on Government
4 Reform of the House of Representatives and the Com-
5 mittee on Governmental Affairs of the Senate—

6 (A) notification of such determination; and

7 (B) the justification for such determination.

8 (b) INCREASED MICRO-PURCHASE THRESHOLD FOR
9 CERTAIN PROCUREMENTS.—(1) The Secretary may des-
10 ignate certain employees of the Department to make pro-
11 curements described in subsection (a) for which in the ad-
12 ministration of section 32 of the Office of Federal Pro-
13 curement Policy Act (41 U.S.C. 428) the amount specified
14 in subsections (c), (d), and (f) of such section 32 shall
15 be deemed to be \$5,000.

16 (2) The number of employees designated under para-
17 graph (1) shall be—

18 (A) fewer than the number of employees of the
19 Department who are authorized to make purchases
20 without obtaining competitive quotations, pursuant
21 to section 32(c) of the Office of Federal Procure-
22 ment Policy Act (41 U.S.C. 428(c));

23 (B) sufficient to ensure the geographic dispersal
24 of the availability of the use of the procurement au-



1 thority under such paragraph at locations reasonably
2 considered to be potential terrorist targets; and

3 (C) sufficiently limited to allow for the careful
4 monitoring of employees designated under such
5 paragraph.

6 (3) Procurements made under the authority of this
7 subsection shall be subject to review by a designated su-
8 pervisor on not less than a monthly basis. The supervisor
9 responsible for the review shall be responsible for no more
10 than 7 employees making procurements under this sub-
11 section.

12 (c) SIMPLIFIED ACQUISITION PROCEDURES.—(1)
13 With respect to a procurement described in subsection (a),
14 the Secretary may deem the simplified acquisition thresh-
15 old referred to in section 4(11) of the Office of Federal
16 Procurement Policy Act (41 U.S.C. 403(11)) to be
17 \$175,000.

18 (2) Section 18(c)(1) of the Office of Federal Procure-
19 ment Policy Act is amended by adding at the end the fol-
20 lowing new subparagraph:

21 “(H) the procurement is by the Secretary
22 of Homeland Security pursuant to the special
23 procedures provided in section 742(c) of the
24 Homeland Security Act of 2002.”.



1 (d) APPLICATION OF CERTAIN COMMERCIAL ITEMS

2 AUTHORITIES.—(1) With respect to a procurement de-
3 scribed in subsection (a), the Secretary may deem any
4 item or service to be a commercial item for the purpose
5 of Federal procurement laws.

6 (2) The \$5,000,000 limitation provided in section
7 31(a)(2) of the Office of Federal Procurement Policy Act
8 (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the
9 Federal Property and Administrative Services Act of 1949
10 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be
11 \$7,500,000 for purposes of property or services under the
12 authority of this subsection.

13 (3) Authority under a provision of law referred to in
14 paragraph (2) that expires under section 4202(e) of the
15 Clinger-Cohen Act of 1996 (divisions D and E of Public
16 Law 104–106; 10 U.S.C. 2304 note) shall, notwith-
17 standing such section, continue to apply for a procurement
18 described in subsection (a).

19 (e) REPORT.—Not later than 180 days after the end
20 of fiscal year 2005, the Comptroller General shall submit
21 to the Committee on Governmental Affairs of the Senate
22 and the Committee on Government Reform of the House
23 of Representatives a report on the use of the authorities
24 provided in this section. The report shall contain the fol-
25 lowing:



1 (1) An assessment of the extent to which prop-
2 erty and services acquired using authorities provided
3 under this section contributed to the capacity of the
4 Federal workforce to facilitate the mission of the
5 Department as described in section 101.

6 (2) An assessment of the extent to which prices
7 for property and services acquired using authorities
8 provided under this section reflected the best value.

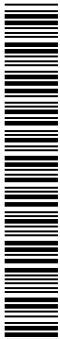
9 (3) The number of employees designated by
10 each executive agency under subsection (b)(1).

11 (4) An assessment of the extent to which the
12 Department has implemented subsections (b)(2) and
13 (b)(3) to monitor the use of procurement authority
14 by employees designated under subsection (b)(1).

15 (5) Any recommendations of the Comptroller
16 General for improving the effectiveness of the imple-
17 mentation of the provisions of this section.

18 **SEC. 743. PROGRAM TO ENCOURAGE AND SUPPORT INNO-**
19 **VATIVE SOLUTIONS TO ENHANCE HOMELAND**
20 **SECURITY.**

21 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
22 shall establish and promote a program to encourage and
23 recognize contractor innovation and excellence in facili-
24 tating the mission of the Department (as described in sec-
25 tion 101).



1 (b) ISSUANCE OF ANNOUNCEMENTS SEEKING INNO-
2 VATIVE SOLUTIONS.—Under the program, the Secretary
3 shall issue announcements seeking unique and innovative
4 solutions to advance the mission of the Department.

5 (c) TECHNICAL ASSISTANCE TEAM.—(1) The Sec-
6 retary shall convene a multifunction technical assistance
7 team to assist in screening proposals submitted to the Sec-
8 retary to provide unique and innovative solutions to ad-
9 vance the mission of the Department. The team shall be
10 composed of Department employees who have expertise in
11 scientific and technical disciplines that would facilitate the
12 assessment of the feasibility of the proposals.

13 (2) The technical assistance team shall—

14 (A) assess the feasibility, scientific and tech-
15 nical merits, and estimated cost of each proposal;
16 and

17 (B) submit each proposal, and the assessment
18 of the proposal, to each Under Secretary of the De-
19 partment whose duties most coincide with the sub-
20 ject matter of the proposal and to any other execu-
21 tive agency whose mission would, in the opinion of
22 the technical assistance team, be facilitated by the
23 subject matter of the proposal.

24 (3) The technical assistance team shall not consider
25 or evaluate proposals submitted in response to a solicita-



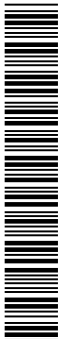
1 tion for offers for a pending procurement or for a specific
2 agency requirement.

3 (d) MONETARY AWARDS FOR INNOVATIVE SOLU-
4 TIONS.—(1) Under the program carried out under this
5 section, the Secretary shall provide monetary awards in
6 recognition of unique and innovative solutions with the po-
7 tential to significantly advance the mission of the Depart-
8 ment.

9 (2) The Secretary shall use a competitive process to
10 select recipients of monetary awards under this subsection
11 which shall include the widely advertised solicitation (in-
12 cluding the announcements described in subsection (b)) of
13 descriptive submissions on technology developments and
14 prototypes, the substance of which are not otherwise avail-
15 able to the United States. The Secretary shall work with
16 the technical assistance team described in subsection (c)
17 in carrying out the competitive selection process.

18 (3) An award made under this subsection may not
19 exceed \$20,000. The total amount of awards made under
20 this subsection in a fiscal year may not exceed \$500,000.

21 (4) At least one quarter of the total amount awarded
22 under this subsection during a fiscal year shall be awarded
23 to small business concerns, within the meaning of such
24 term as used in the Small Business Act (15 U.S.C. 632
25 et seq.).



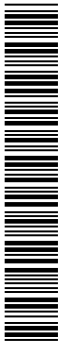
1 **SEC. 744. RISK SHARING AND INDEMNIFICATION.**

2 (a) DEFINITIONS.—Section 4 of the Office of Federal
3 Procurement Policy Act (41 U.S.C. 403) is amended by
4 adding at the end the following new paragraphs:

5 “(16) The term ‘anti-terrorism technology and
6 services’ means any product, equipment, service or
7 device, including information technology as defined
8 in section 5002 of the Clinger–Cohen Act of 1996,
9 system integration and any other kind of services
10 (including support services) related to technology,
11 designed, developed, modified or procured for the
12 purpose of preventing, detecting, identifying, or oth-
13 erwise deterring acts of terrorism.

14 “(17) The term ‘act of terrorism,’ means the
15 calculated attack or threat of attack against persons,
16 property or infrastructure to inculcate fear, intimi-
17 date or coerce a government, the civilian population,
18 or any segment thereof, in the pursuit of political,
19 religious or ideological grounds.

20 “(18) The term ‘insurance carrier’ means any
21 corporation, association, society, order, firm, com-
22 pany, mutual, partnership, individual, aggregation of
23 individuals, or any other legal entity that provides
24 commercial property and casualty insurance. Such
25 term includes any affiliates of a commercial insur-
26 ance carrier.



1 “(19) The term ‘liability insurance’ means in-
2 surance for legal liabilities incurred by the insured
3 resulting from—

4 “(A) loss of or damage to property of oth-
5 ers;

6 “(B) ensuing loss of income or extra ex-
7 pense incurred because of loss of or damage to
8 property of others;

9 “(C) bodily injury (including death) to per-
10 sons other than the insured or its employees; or

11 “(D) loss resulting from debt or default of
12 another.

13 “(20) The term ‘homeland security procure-
14 ment’ means any procurement of anti-terrorism
15 technology and services, as determined by the head
16 of the agency, procured for the purpose of pre-
17 venting, detecting, or otherwise deterring acts of ter-
18 rorism.”

19 (b) FEDERAL RISK SHARING AND INDEMNIFICA-
20 TION.—The Office of Federal Procurement Policy Act is
21 further amended by adding at the end the following new
22 sections:

23 **“SEC. 40. FEDERAL RISK SHARING AND INDEMNIFICATION.**

24 “(a) When conducting a homeland security procure-
25 ment the head of an agency may include in a contract



1 an indemnification provision specified in subsection (e) if
2 the head of the agency determines in writing that it is
3 in the best interest of the Government to do so and deter-
4 mines that—

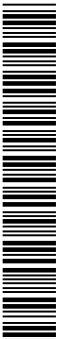
5 “(1) the anti-terrorism technology and services
6 are needed to protect critical infrastructure services
7 or facilities;

8 “(2) the anti-terrorism technology and services
9 would be effective in facilitating the defense against
10 acts of terrorism; and

11 “(3) the supplier of the anti-terrorism tech-
12 nology is unable to secure insurance coverage ade-
13 quate to make the anti-terrorism technology and
14 services available to the Government.

15 “(b) The head of the agency may exercise the author-
16 ity in this section only if authorized by the Director of
17 the Office of Management and Budget to do so.

18 “(c) In order to be eligible for an indemnification pro-
19 vision specified in this section, any entity that provides
20 anti-terrorism technology and services to an agency identi-
21 fied in this Act shall obtain liability insurance of such
22 types and in such amounts, to the maximum extent prac-
23 ticable as determined by the agency, to satisfy otherwise
24 compensable third party claims resulting from an act of



1 terrorism when anti-terrorism technologies and services
2 have been deployed in defense against acts of terrorism.

3 “(d) An indemnification provision included in a con-
4 tract under the authority of this section shall be without
5 regard to other provisions of law relating to the making,
6 performance, amendment or modification of contracts.

7 “(e)(1) The indemnification provision to be included
8 in a contract under the authority of this section shall in-
9 demnify, in whole or in part, the contractor for liability,
10 including reasonable expenses of litigation and settlement,
11 that is not covered by the insurance required under sub-
12 section (c), for:

13 “(A) Claims by third persons, including employ-
14 ees of the contractor, for death, personal injury, or
15 loss of, damage to, or loss of use of property, or eco-
16 nomic losses resulting from an act of terrorism;

17 “(B) Loss of, damage to, or loss of use of prop-
18 erty of the Government; and

19 “(C) Claims arising (i) from indemnification
20 agreements between the contractor and a subcon-
21 tractor or subcontractors, or (ii) from such arrange-
22 ments and further indemnification arrangements be-
23 tween subcontractors at any tier, provided that all
24 such arrangements were entered into pursuant to
25 the terms of this section.



1 “(2) Liabilities arising out of the contractor’s willful
2 misconduct or lack of good faith shall not be entitled to
3 indemnification under the authority of this section.

4 “(f) An indemnification provision included in a con-
5 tract under the authority of this section shall be nego-
6 tiated and signed by the agency contracting officer and
7 an authorized representative of the contractor and ap-
8 proved by the head of the agency prior to the commence-
9 ment of performance of the contract.

10 “(g) The authority conferred by this section shall be
11 limited to the following agencies:

12 “(1) The Department of Homeland Security;

13 “(2) The Department of Agriculture;

14 “(3) The Department of Commerce;

15 “(4) The Department of Defense;

16 “(5) The Department of Energy;

17 “(6) The Department of Health and Human
18 Services;

19 “(7) The Department of the Interior;

20 “(8) The Department of Justice;

21 “(9) The Department of State;

22 “(10) The Department of the Treasury;

23 “(11) The Department of Transportation;

24 “(12) The Federal Emergency Management
25 Agency;



1 “(13) The Federal Reserve System;

2 “(14) The General Services Administration;

3 “(15) The National Aeronautics and Space Ad-
4 ministration;

5 “(16) The Tennessee Valley Authority;

6 “(17) The U.S. Postal Service;

7 “(18) The Central Intelligence Agency;

8 “(19) The Architect of the Capitol; and

9 “(20) Any other agency designated by the Sec-
10 retary of Homeland Security that engages in home-
11 land security contracting activities.

12 “(h) If any suit or action is filed or any claim is made
13 against the contractor for any losses to third parties aris-
14 ing out of an act of terrorism when its anti-terrorism tech-
15 nologies and services have been deployed such that the
16 cost and expense of the losses may be indemnified by the
17 United States under this section, the contractor shall—

18 “(1) immediately notify the Secretary and
19 promptly furnish copies of all pertinent papers re-
20 ceived;

21 “(2) authorize United States Government rep-
22 resentatives to collaborate with counsel for the con-
23 tractor’s insurance carrier in settling or defending
24 the claim when the amount of the liability claimed
25 may exceed the amount of insurance coverage; and



1 “(3) authorize United States Government rep-
2 representatives to settle or defend the claim and to rep-
3 resent the contractor in or to take charge of any liti-
4 gation, if required by the United States Government,
5 when the liability is not insured.

6 The contractor may, at its own expense, be associated with
7 the United States Government representatives in any such
8 claim or litigation.”.

9 (c) STATE AND LOCAL RISK SHARING AND INDEM-
10 NIFICATION.—(1) The Secretary may, upon the applica-
11 tion of a State or local government, provide for indem-
12 nification of contractors who provide anti-terrorism tech-
13 nologies and services to State or local governments if the
14 Secretary determines in writing that—

15 (A) it is in the best interest of the Government
16 to do so;

17 (B) the State or local government is unable to
18 provide the required indemnification; and

19 (C) the anti-terrorism technology and services
20 are needed to protect critical infrastructure services
21 or facilities, would be effective in facilitating the de-
22 fense against acts of terrorism, and would not be
23 reasonably available absent indemnification.



1 (2) The Secretary may exercise the authority in this
2 subsection only if authorized by the Director of the Office
3 of Management and Budget to do so.

4 (3) In order to be eligible for indemnification, any
5 entity that provides anti-terrorism technology and services
6 to a State or local government shall obtain liability insur-
7 ance of such types and in such amounts to the maximum
8 extent practicable, as determined by the Secretary, to sat-
9 isfy otherwise compensable third party claims resulting
10 from an act of terrorism when anti-terrorism technologies
11 and services have been deployed in defense against acts
12 of terrorism.

13 (4) The indemnification provided under the authority
14 of this subsection shall indemnify, in whole or in part, the
15 contractor for liability, including reasonable expenses of
16 litigation and settlement, that is not covered by the insur-
17 ance required under paragraph (3) for—

18 (A) claims by third persons, including employ-
19 ees of the contractor, for death, personal injury, or
20 loss of, damage to, or loss of use of property, or eco-
21 nomic losses resulting from an act of terrorism;

22 (B) loss of, damage to, or loss of use of prop-
23 erty of the Government; and

24 (C) claims arising—



1 (i) from indemnification agreements be-
2 tween the contractor and a subcontractor or
3 subcontractors; or

4 (ii) from such arrangements and further
5 indemnification arrangements between sub-
6 contractors at any tier, provided that all such
7 arrangements were entered into pursuant to the
8 terms of this subsection.

9 Liabilities arising out of the contractor's willful mis-
10 conduct or lack of good faith shall not be entitled to in-
11 demnification under the authority of this subsection.

12 (5) If any suit or action is filed or any claim is made
13 against the contractor for any losses to third parties aris-
14 ing out of an act of terrorism when its anti-terrorism tech-
15 nologies and services have been deployed such that the
16 cost and expense of the losses may be indemnified by the
17 United States under this subsection, the contractor
18 shall—

19 (A) immediately notify the Secretary and
20 promptly furnish copies of all pertinent papers re-
21 ceived;

22 (B) authorize United States Government rep-
23 resentatives to collaborate with counsel for the con-
24 tractor's insurance carrier in settling or defending



1 the claim when the amount of the liability claimed
2 may exceed the amount of insurance coverage; and

3 (C) authorize United States Government rep-
4 resentatives to settle or defend the claim and to rep-
5 resent the contractor in or to take charge of any liti-
6 gation, if required by the United States Government,
7 when the liability is not insured.

8 The contractor may, at its own expense, be associated with
9 the United States Government representatives in any such
10 claim or litigation.

11 (6) In this subsection, the definitions in paragraphs
12 (16) through (20) of section 4 of the Office of Federal
13 Procurement Policy Act shall apply.

14 (c) IMPLEMENTING REGULATIONS.—Not later than
15 120 days after the date of the enactment of this Act, the
16 Federal Acquisition Regulation shall be amended to en-
17 sure consistency between the Federal Acquisition Regula-
18 tion and this section.

19 **SEC. 745. PROCUREMENTS FROM SMALL BUSINESSES.**

20 There is established in the Department an office to
21 be known as the “Office of Small and Disadvantaged
22 Business Utilization”. The management of such office
23 shall be vested in the manner described in section 15(k)
24 of the Small Business Act (15 U.S.C. 644(k)) and shall
25 carry out the functions described in such section.



1 **Subtitle F—Information Sharing**

2 **SEC. 750. SHORT TITLE.**

3 This subtitle may be cited as the “Homeland Security
4 Information Sharing Act”.

5 **SEC. 751. FINDINGS AND SENSE OF CONGRESS.**

6 (a) FINDINGS.—The Congress finds the following:

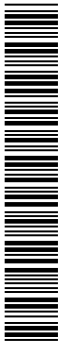
7 (1) The Federal Government is required by the
8 Constitution to provide for the common defense,
9 which includes terrorist attack.

10 (2) The Federal Government relies on State
11 and local personnel to protect against terrorist at-
12 tack.

13 (3) The Federal Government collects, creates,
14 manages, and protects classified and sensitive but
15 unclassified information to enhance homeland secu-
16 rity.

17 (4) Some homeland security information is
18 needed by the State and local personnel to prevent
19 and prepare for terrorist attack.

20 (5) The needs of State and local personnel to
21 have access to relevant homeland security informa-
22 tion to combat terrorism must be reconciled with the
23 need to preserve the protected status of such infor-
24 mation and to protect the sources and methods used
25 to acquire such information.



1 (6) Granting security clearances to certain
2 State and local personnel is one way to facilitate the
3 sharing of information regarding specific terrorist
4 threats among Federal, State, and local levels of
5 government.

6 (7) Methods exist to declassify, redact, or other-
7 wise adapt classified information so it may be shared
8 with State and local personnel without the need for
9 granting additional security clearances.

10 (8) State and local personnel have capabilities
11 and opportunities to gather information on sus-
12 picious activities and terrorist threats not possessed
13 by Federal agencies.

14 (9) The Federal Government and State and
15 local governments and agencies in other jurisdictions
16 may benefit from such information.

17 (10) Federal, State, and local governments and
18 intelligence, law enforcement, and other emergency
19 preparation and response agencies must act in part-
20 nership to maximize the benefits of information
21 gathering and analysis to prevent and respond to
22 terrorist attacks.

23 (11) Information systems, including the Na-
24 tional Law Enforcement Telecommunications Sys-
25 tem and the Terrorist Threat Warning System, have



1 been established for rapid sharing of classified and
2 sensitive but unclassified information among Fed-
3 eral, State, and local entities.

4 (12) Increased efforts to share homeland secu-
5 rity information should avoid duplicating existing in-
6 formation systems.

7 (b) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that Federal, State, and local entities should share
9 homeland security information to the maximum extent
10 practicable, with special emphasis on hard-to-reach urban
11 and rural communities.

12 **SEC. 752. FACILITATING HOMELAND SECURITY INFORMA-**
13 **TION SHARING PROCEDURES.**

14 (a) PROCEDURES FOR DETERMINING EXTENT OF
15 SHARING OF HOMELAND SECURITY INFORMATION.—

16 (1) The Secretary shall prescribe procedures
17 under which relevant Federal agencies determine—

18 (A) whether, how, and to what extent
19 homeland security information may be shared
20 with appropriate State and local personnel, and
21 with which such personnel it may be shared;

22 (B) how to identify and safeguard home-
23 land security information that is sensitive but
24 unclassified; and



1 (C) to the extent such information is in
2 classified form, whether, how, and to what ex-
3 tent to remove classified information, as appro-
4 priate, and with which such personnel it may be
5 shared after such information is removed.

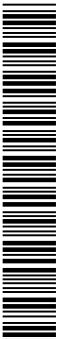
6 (2) The Secretary shall ensure that such proce-
7 dures apply to all agencies of the Federal Govern-
8 ment.

9 (3) Such procedures shall not change the sub-
10 stantive requirements for the classification and safe-
11 guarding of classified information.

12 (4) Such procedures shall not change the re-
13 quirements and authorities to protect sources and
14 methods.

15 (b) PROCEDURES FOR SHARING OF HOMELAND SE-
16 CURITY INFORMATION.—

17 (1) Under procedures prescribed by the Sec-
18 retary, all appropriate agencies, including the intel-
19 ligence community, shall, through information shar-
20 ing systems, share homeland security information
21 with appropriate State and local personnel to the ex-
22 tent such information may be shared, as determined
23 in accordance with subsection (a), together with as-
24 sessments of the credibility of such information.



1 (2) Each information sharing system through
2 which information is shared under paragraph (1)
3 shall—

4 (A) have the capability to transmit unclas-
5 sified or classified information, though the pro-
6 cedures and recipients for each capability may
7 differ;

8 (B) have the capability to restrict delivery
9 of information to specified subgroups by geo-
10 graphic location, type of organization, position
11 of a recipient within an organization, or a re-
12 cipient's need to know such information;

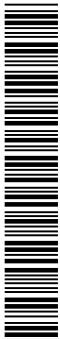
13 (C) be configured to allow the efficient and
14 effective sharing of information; and

15 (D) be accessible to appropriate State and
16 local personnel.

17 (3) The procedures prescribed under paragraph
18 (1) shall establish conditions on the use of informa-
19 tion shared under paragraph (1)—

20 (A) to limit the dissemination of such in-
21 formation to ensure that such information is
22 not used for an unauthorized purpose;

23 (B) to ensure the security and confiden-
24 tiality of such information;



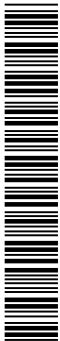
1 (C) to protect the constitutional and statu-
2 tory rights of any individuals who are subjects
3 of such information; and

4 (D) to provide data integrity through the
5 timely removal and destruction of obsolete or
6 erroneous names and information.

7 (4) The procedures prescribed under paragraph
8 (1) shall ensure, to the greatest extent practicable,
9 that the information sharing system through which
10 information is shared under such paragraph include
11 existing information sharing systems, including, but
12 not limited to, the National Law Enforcement Tele-
13 communications System, the Regional Information
14 Sharing System, and the Terrorist Threat Warning
15 System of the Federal Bureau of Investigation.

16 (5) Each appropriate Federal agency, as deter-
17 mined by the Secretary, shall have access to each in-
18 formation sharing system through which information
19 is shared under paragraph (1), and shall therefore
20 have access to all information, as appropriate,
21 shared under such paragraph.

22 (6) The procedures prescribed under paragraph
23 (1) shall ensure that appropriate State and local
24 personnel are authorized to use such information
25 sharing systems—



1 (A) to access information shared with such
2 personnel; and

3 (B) to share, with others who have access
4 to such information sharing systems, the home-
5 land security information of their own jurisdic-
6 tions, which shall be marked appropriately as
7 pertaining to potential terrorist activity.

8 (7) Under procedures prescribed jointly by the
9 Director of Central Intelligence and the Attorney
10 General, each appropriate Federal agency, as deter-
11 mined by the Secretary, shall review and assess the
12 information shared under paragraph (6) and inte-
13 grate such information with existing intelligence.

14 (c) SHARING OF CLASSIFIED INFORMATION AND
15 SENSITIVE BUT UNCLASSIFIED INFORMATION WITH
16 STATE AND LOCAL PERSONNEL.—

17 (1) The Secretary shall prescribe procedures
18 under which Federal agencies may, to the extent the
19 President considers necessary, share with appro-
20 priate State and local personnel homeland security
21 information that remains classified or otherwise pro-
22 tected after the determinations prescribed under the
23 procedures set forth in subsection (a).



1 (2) It is the sense of Congress that such proce-
2 dures may include one or more of the following
3 means:

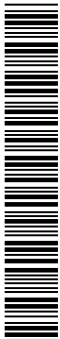
4 (A) Carrying out security clearance inves-
5 tigations with respect to appropriate State and
6 local personnel.

7 (B) With respect to information that is
8 sensitive but unclassified, entering into non-
9 disclosure agreements with appropriate State
10 and local personnel.

11 (C) Increased use of information-sharing
12 partnerships that include appropriate State and
13 local personnel, such as the Joint Terrorism
14 Task Forces of the Federal Bureau of Inves-
15 tigation, the Anti-Terrorism Task Forces of the
16 Department of Justice, and regional Terrorism
17 Early Warning Groups.

18 (d) RESPONSIBLE OFFICIALS.—For each affected
19 Federal agency, the head of such agency shall designate
20 an official to administer this Act with respect to such
21 agency.

22 (e) FEDERAL CONTROL OF INFORMATION.—Under
23 procedures prescribed under this section, information ob-
24 tained by a State or local government from a Federal
25 agency under this section shall remain under the control



1 of the Federal agency, and a State or local law authorizing
2 or requiring such a government to disclose information
3 shall not apply to such information.

4 (f) DEFINITIONS.—As used in this section:

5 (1) The term “homeland security information”
6 means any information possessed by a Federal,
7 State, or local agency that—

8 (A) relates to the threat of terrorist activ-
9 ity;

10 (B) relates to the ability to prevent, inter-
11 dict, or disrupt terrorist activity;

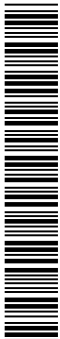
12 (C) would improve the identification or in-
13 vestigation of a suspected terrorist or terrorist
14 organization;

15 (D) would improve the response to a ter-
16 rorist act; or

17 (E) does not include individually identifi-
18 able information collected solely for statistical
19 purposes.

20 (2) The term “intelligence community” has the
21 meaning given such term in section 3(4) of the Na-
22 tional Security Act of 1947 (50 U.S.C. 401a(4)).

23 (3) The term “State and local personnel”
24 means any of the following persons involved in pre-
25 vention, preparation, or response for terrorist attack:



1 (A) State Governors, mayors, and other lo-
2 cally elected officials.

3 (B) State and local law enforcement per-
4 sonnel and firefighters.

5 (C) Public health and medical profes-
6 sionals.

7 (D) Regional, State, and local emergency
8 management agency personnel, including State
9 adjutant generals.

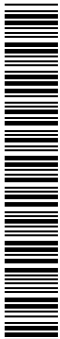
10 (E) Other appropriate emergency response
11 agency personnel.

12 (F) Employees of private-sector entities
13 that affect critical infrastructure, cyber, eco-
14 nomic, or public health security, as designated
15 by the Federal government in procedures devel-
16 oped pursuant to this section.

17 (4) The term “State” includes the District of
18 Columbia and any commonwealth, territory, or pos-
19 session of the United States.

20 **SEC. 753. REPORT.**

21 (a) REPORT REQUIRED.—Not later than 12 months
22 after the date of the enactment of this Act, the Secretary
23 shall submit to the congressional committees specified in
24 subsection (b) a report on the implementation of section
25 752. The report shall include any recommendations for ad-



ditional measures or appropriation requests, beyond the requirements of section 752, to increase the effectiveness of sharing of information among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 754. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 752.

SEC. 755. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting “, or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,” after “Rule 6”; and

(2) in paragraph (3)—



1 (A) in subparagraph (A)(ii), by inserting
2 “or of a foreign government” after “(including
3 personnel of a state or subdivision of a state”;

4 (B) in subparagraph (C)(i)—

5 (i) in subclause (I), by inserting be-
6 fore the semicolon the following: “or, upon
7 a request by an attorney for the govern-
8 ment, when sought by a foreign court or
9 prosecutor for use in an official criminal
10 investigation”;

11 (ii) in subclause (IV)—

12 (I) by inserting “or foreign”
13 after “may disclose a violation of
14 State”;

15 (II) by inserting “or of a foreign
16 government” after “to an appropriate
17 official of a State or subdivision of a
18 State”; and

19 (III) by striking “or” at the end;

20 (iii) by striking the period at the end
21 of subclause (V) and inserting “; or”; and

22 (iv) by adding at the end the fol-
23 lowing:

24 “(VI) when matters involve a threat
25 of actual or potential attack or other grave



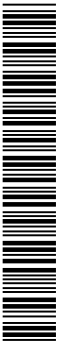
1 hostile acts of a foreign power or an agent
2 of a foreign power, domestic or inter-
3 national sabotage, domestic or inter-
4 national terrorism, or clandestine intel-
5 ligence gathering activities by an intel-
6 ligence service or network of a foreign
7 power or by an agent of a foreign power,
8 within the United States or elsewhere, to
9 any appropriate federal, state, local, or for-
10 eign government official for the purpose of
11 preventing or responding to such a
12 threat.”; and

13 (C) in subparagraph (C)(iii)—

14 (i) by striking “Federal”;

15 (ii) by inserting “or clause (i)(VI)”
16 after “clause (i)(V)”;

17 (iii) by adding at the end the fol-
18 lowing: “Any state, local, or foreign official
19 who receives information pursuant to
20 clause (i)(VI) shall use that information
21 only consistent with such guidelines as the
22 Attorney General and Director of Central
23 Intelligence shall jointly issue.”.



1 **SEC. 756. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND**
2 **ORAL INTERCEPTION INFORMATION.**

3 Section 2517 of title 18, United States Code, is
4 amended by adding at the end the following:

5 “(7) Any investigative or law enforcement officer, or
6 attorney for the government, who by any means author-
7 ized by this chapter, has obtained knowledge of the con-
8 tents of any wire, oral, or electronic communication, or
9 evidence derived therefrom, may disclose such contents or
10 derivative evidence to a foreign investigative or law en-
11 forcement officer to the extent that such disclosure is ap-
12 propriate to the proper performance of the official duties
13 of the officer making or receiving the disclosure, and for-
14 eign investigative or law enforcement officers may use or
15 disclose such contents or derivative evidence to the extent
16 such use or disclosure is appropriate to the proper per-
17 formance of their official duties.

18 “(8) Any investigative or law enforcement officer, or
19 attorney for the government, who by any means author-
20 ized by this chapter, has obtained knowledge of the con-
21 tents of any wire, oral, or electronic communication, or
22 evidence derived therefrom, may disclose such contents or
23 derivative evidence to any appropriate Federal, State,
24 local, or foreign government official to the extent that such
25 contents or derivative evidence reveals a threat of actual
26 or potential attack or other grave hostile acts of a foreign



1 power or an agent of a foreign power, domestic or inter-
2 national sabotage, domestic or international terrorism, or
3 clandestine intelligence gathering activities by an intel-
4 ligence service or network of a foreign power or by an
5 agent of a foreign power, within the United States or else-
6 where, for the purpose of preventing or responding to such
7 a threat. Any official who receives information pursuant
8 to this provision may use that information only as nec-
9 essary in the conduct of that person's official duties sub-
10 ject to any limitations on the unauthorized disclosure of
11 such information, and any State, local, or foreign official
12 who receives information pursuant to this provision may
13 use that information only consistent with such guidelines
14 as the Attorney General and Director of Central Intel-
15 ligence shall jointly issue.”.

16 **SEC. 757. FOREIGN INTELLIGENCE INFORMATION.**

17 (a) DISSEMINATION AUTHORIZED.—Section
18 203(d)(1) of the Uniting and Strengthening America by
19 Providing Appropriate Tools Required to Intercept and
20 Obstruct Terrorism Act (USA PATRIOT ACT) of 2001
21 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by
22 adding at the end the following: “It shall be lawful for
23 information revealing a threat of actual or potential attack
24 or other grave hostile acts of a foreign power or an agent
25 of a foreign power, domestic or international sabotage, do-



1 mestic or international terrorism, or clandestine intel-
2 ligence gathering activities by an intelligence service or
3 network of a foreign power or by an agent of a foreign
4 power, within the United States or elsewhere, obtained as
5 part of a criminal investigation to be disclosed to any ap-
6 propriate Federal, State, local, or foreign government offi-
7 cial for the purpose of preventing or responding to such
8 a threat. Any official who receives information pursuant
9 to this provision may use that information only as nec-
10 essary in the conduct of that person's official duties sub-
11 ject to any limitations on the unauthorized disclosure of
12 such information, and any State, local, or foreign official
13 who receives information pursuant to this provision may
14 use that information only consistent with such guidelines
15 as the Attorney General and Director of Central Intel-
16 ligence shall jointly issue.”.

17 (b) CONFORMING AMENDMENTS.—Section 203(c) of
18 that Act is amended—

19 (1) by striking “section 2517(6)” and inserting
20 “paragraphs (6) and (8) of section 2517 of title 18,
21 United States Code,”; and

22 (2) by inserting “and (VI)” after “Rule
23 6(e)(3)(C)(i)(V)”.



1 **SEC. 758. INFORMATION ACQUIRED FROM AN ELECTRONIC**
2 **SURVEILLANCE.**

3 Section 106(k)(1) of the Foreign Intelligence Surveil-
4 lance Act of 1978 (50 U.S.C. 1806) is amended by insert-
5 ing after “law enforcement officers” the following: “or law
6 enforcement personnel of a State or political subdivision
7 of a State (including the chief executive officer of that
8 State or political subdivision who has the authority to ap-
9 point or direct the chief law enforcement officer of that
10 State or political subdivision)”.

11 **SEC. 759. INFORMATION ACQUIRED FROM A PHYSICAL**
12 **SEARCH.**

13 Section 305(k)(1) of the Foreign Intelligence Surveil-
14 lance Act of 1978 (50 U.S.C. 1825) is amended by insert-
15 ing after “law enforcement officers” the following: “or law
16 enforcement personnel of a State or political subdivision
17 of a State (including the chief executive officer of that
18 State or political subdivision who has the authority to ap-
19 point or direct the chief law enforcement officer of that
20 State or political subdivision)”.

21 **Subtitle G—Property**

22 **SEC. 761. REAL PROPERTY MANAGEMENT.**

23 The Secretary, in accordance with this title and regu-
24 lations prescribed jointly by the Secretary, the Adminis-
25 trator of General Services, and the Director of the Office
26 of Management and Budget—



1 (1) may acquire replacement real property (in-
2 cluding interests therein)—

3 (A) by transfer or exchange of real prop-
4 erty under the jurisdiction, custody, and control
5 of the Department with other executive agen-
6 cies; or

7 (B) by sale to or exchange of such prop-
8 erty with non-Federal entities, if—

9 (i) the transaction does not conflict
10 with other applicable laws governing the
11 acquisition of interests in real property by
12 Federal agencies;

13 (ii) following consultation with the
14 Administrator, the agency first made the
15 property available for transfer or exchange
16 to other Federal agencies; and

17 (iii) the transaction results in the
18 agency receiving fair market value, which
19 shall be based upon an appraisal;

20 (2) by lease, permit, license, or other similar in-
21 strument, may make available to other executive
22 agencies and to non-Federal entities, on a fair mar-
23 ket rental value basis, the unexpired portion of any
24 Government lease for real property under the juris-
25 diction, custody, and control of the Director;



1 (3) may make available by outlease agreements
2 with other executive agencies or with non-Federal
3 entities, any unused or underused portion of or in-
4 terest in any real property and related personal
5 property under the jurisdiction, custody, and control
6 of the Department; and

7 (4) obligate or expend amounts received by the
8 United States as a result of any exercise of the au-
9 thority granted by paragraph (2) or (3) without re-
10 gard to fiscal year limitations, for the capital asset
11 expenditures of the Department.

12 **SEC. 762. CRITERIA FOR USING AUTHORITIES.**

13 (a) IN GENERAL.—Subject to the requirements of
14 subsection (b), the Secretary may apply authority under
15 section 761 to a real property interest only if—

16 (1) the Secretary has determined that such real
17 property interest is not excess property, and includes
18 as part of the documentation required under sub-
19 section (b)(3) a description of the need and mission
20 requirement fulfilled by the Federal property;

21 (2) the real property interest is used to fulfill
22 or support a continuing mission requirement of the
23 Department; and



1 (3) the real property interest can, by the appli-
2 cation of the authority, improve the support of such
3 mission.

4 (b) CRITERIA FOR APPLICATION.—Before applying
5 authority under section 761 to a real property interest,
6 the Secretary, in consultation with the Administrator of
7 General Services, must determine that such application
8 meets all of the following criteria:

9 (1) The application supports the goals and ob-
10 jectives set forth in the Department's strategic plan
11 under section 306 of title 5, United States Code.

12 (2) Use of the real property is economical, cost
13 effective, and in the best interests of the United
14 States.

15 (3) The application is documented in a business
16 plan that, commensurate with the nature of the au-
17 thority applied—

18 (A) analyzes all reasonable options for
19 using the property;

20 (B) describes how the application will be in
21 compliance with applicable provisions of law, in-
22 cluding such provisions of—

23 (i) the National Environmental Policy
24 Act of 1969 (42 U.S.C. 4321 et seq.); and



1 (ii) the McKinney-Vento Homeless As-
2 sistance Act (42 U.S.C. 11301 et seq.), in-
3 cluding by—

4 (I) describing the result of the
5 determination under that Act by the
6 Secretary of Housing and Urban De-
7 velopment of the suitability of the
8 property for use to assist the home-
9 less; and

10 (II) explaining the rationale for
11 the Department's decision not to
12 make the property available for use to
13 assist the homeless; and

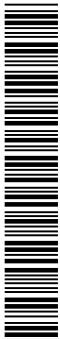
14 (C) establishes effective procedures for so-
15 liciting, assessing, and taking into account
16 input from the local community.

17 **SEC. 763. OUTLEASES.**

18 (a) IN GENERAL.—The Secretary may make property
19 available by an outlease agreement authorized by section
20 761 only if—

21 (1) the Secretary finds that—

22 (A) there is no long-term mission require-
23 ment for the property, but the Federal Govern-
24 ment is not permitted to dispose of it; or



1 (B)(i) there is a continuing, long-term mis-
2 sion requirement of the Department for the
3 property to remain in Government ownership;
4 and

5 (ii) the use of the real property by the les-
6 see will not be inconsistent with such mission;

7 (2) in the case of an outlease to a non-Federal
8 entity, the outlease is conducted competitively; and

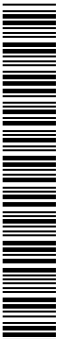
9 (3) the agreement—

10 (A) is for a term no longer than 50 years;
11 and

12 (B) will result in the Department receiving
13 fair market value which, in the case of an ex-
14 change or sale of Federal real property, shall be
15 based upon an appraisal.

16 (b) CONSTRUCTION ON OUTLEASED PROPERTY; AP-
17 PPLICABLE LAW.—

18 (1) PROPERTY SUBJECT TO RETAINED AUTHOR-
19 ITY.—If the Secretary retains authority over any de-
20 cision to construct or alter buildings on property
21 outleased to a non-Federal entity under section 761,
22 then any such construction or alteration shall com-
23 ply with section 21 of the Public Buildings Act of
24 1959 (40 U.S.C. 619).



1 (2) PROPERTY NOT SUBJECT TO RETAINED AU-
2 THORITY.—(A) If the Secretary does not retain au-
3 thority over any decision to construct or alter build-
4 ings on property outleased to a non-Federal entity
5 under section 761, then any such construction or al-
6 teration shall comply with all laws described in sub-
7 paragraph (B) that would apply to such construction
8 or alteration if the property were not Federal prop-
9 erty.

10 (B) The laws referred to in subparagraph (A)
11 are all laws of a State, and of a political subdivision
12 of a State, relating to zoning, landscaping, open
13 space, minimum distance of a building from a prop-
14 erty line, maximum building height, historic preser-
15 vation, esthetic qualities of a building, building
16 codes, and similar matters, and any other State or
17 local laws relating to construction or alteration of a
18 building, respectively, by the non-Federal entity on
19 non-Federal lands.

20 (C) The Secretary may waive the application of
21 subparagraph (A) if the Secretary determines that
22 application of that subparagraph would hinder ful-
23 fillment of the mission of the Department under sec-
24 tion 101(b).



1 (c) REPORTS.—The Comptroller General of the
2 United States shall submit biennial reports to the Con-
3 gress, including to the Committee on Government Reform
4 of the House of Representatives and the Committee on
5 Governmental Affairs of the Senate, on the effectiveness
6 of the use of outlease authority under section 761.

7 **SEC. 764. REVIEW AND REVISION OF TRANSACTIONS BY AD-**
8 **MINISTRATOR.**

9 The Administrator of General Services may, in the
10 sole discretion of the Administrator, review any trans-
11 action of the Department undertaken utilizing authority
12 under section 761. After such review, the Administrator
13 may disapprove such transaction if the Administrator de-
14 termines the transaction does not reflect due diligence by
15 the Department, is not in the best interest of the United
16 States, or does not comply with the requirements of this
17 title.

18 **SEC. 765. TRANSACTIONAL REPORTS.**

19 (a) IN GENERAL.—For those transactions authorized
20 under section 761 involving the sale, exchange, or outlease
21 to a non-Federal entity of any asset valued in excess of
22 \$700,000 at the time of the transaction, the Secretary
23 shall submit the business plan required by section
24 762(b)(3) to the Director of the Office of Management
25 and Budget, the Committee on Governmental Affairs of



1 the Senate, and the Committee on Government Reform
2 of the House of Representatives at least 30 calendar days
3 before the final execution of such transaction.

4 (b) DISPOSAL OF REAL PROPERTY BY NEGOTIA-
5 TION.—The Secretary shall prepare and submit to the
6 Committee on Governmental Affairs of the Senate and the
7 Committee on Government Reform of the House of Rep-
8 resentatives, a statement explaining the circumstances of
9 each disposal by negotiation, under section 761, of any
10 real property that has an estimated fair market value in
11 excess of \$700,000.

12 (c) ADJUSTMENT OF THRESHOLD.—The Adminis-
13 trator of General Services may increase or decrease the
14 dollar amounts in subsections (a) and (b) to reflect a per-
15 centage increase or decrease in the Department of Com-
16 merce Consumer Price Index.

17 **TITLE VIII—TRANSITION**

18 **SEC. 801. DEFINITIONS.**

19 For purposes of this title—

20 (1) the term “agency” includes any entity, or-
21 ganizational unit, or function; and

22 (2) the term “transition period” means the 12-
23 month period beginning on the effective date of this
24 Act.



1 **SEC. 802. REORGANIZATION PLAN.**

2 (a) SUBMISSION OF PLAN.—Not later than 60 days
3 after the date of the enactment of this Act, the President
4 shall transmit to the appropriate congressional committees
5 a reorganization plan regarding the following:

6 (1) The transfer of agencies, personnel, assets,
7 and obligations to the Department pursuant to sec-
8 tions 202, 302, 402, and 502.

9 (2) Any consolidation, reorganization, or
10 streamlining of agencies transferred to the Depart-
11 ment pursuant to sections 202, 302, 402, and 502.

12 (b) PLAN ELEMENTS.—The plan transmitted under
13 subsection (a) shall contain, consistent with this Act, such
14 elements as the President deems appropriate, including
15 the following:

16 (1) Identification of any functions of agencies
17 transferred to the Department pursuant to sections
18 202, 302, 402, and 502 that will not be transferred
19 to the Department under the plan.

20 (2) Specification of the steps to be taken by the
21 Secretary to organize the Department, including the
22 delegation or assignment of functions transferred to
23 the Department among officers of the Department
24 in order to permit the Department to carry out the
25 functions transferred under the plan.



1 (3) Specification of the funds available to each
2 agency that will be transferred to the Department as
3 a result of transfers under the plan.

4 (4) Specification of the proposed allocations
5 within the Department of unexpended funds trans-
6 ferred in connection with transfers under the plan.

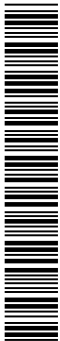
7 (5) Specification of any proposed disposition of
8 property, facilities, contracts, records, and other as-
9 sets and obligations of agencies transferred under
10 the plan.

11 (c) MODIFICATION OF PLAN.—The President may,
12 on the basis of consultations with the appropriate congres-
13 sional committees, modify or revise any part of the plan
14 until that part of the plan becomes effective in accordance
15 with subsection (d).

16 (d) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The reorganization plan de-
18 scribed in this section, including any modifications
19 or revisions of the plan under subsection (d), shall
20 become effective for an agency on the earlier of—

21 (A) the date specified in the plan (or the
22 plan as modified pursuant to subsection (d)),
23 except that such date may not be earlier than
24 90 days after the date the President has trans-
25 mitted the reorganization plan to the appro-



1 priate congressional committees pursuant to
2 subsection (a); or

3 (B) the end of the transition period.

4 (2) STATUTORY CONSTRUCTION.—Nothing in
5 this subsection may be construed to require the
6 transfer of functions, personnel, records, balances of
7 appropriations, or other assets of an agency on a
8 single date.

9 (3) SUPERSEDES EXISTING LAW.—Paragraph
10 (1) shall apply notwithstanding section 905(b) of
11 title 5, United States Code.

12 **SEC. 803. TRANSITIONAL AUTHORITIES.**

13 (a) PROVISION OF ASSISTANCE BY OFFICIALS.—
14 Until the transfer of an agency to the Department, any
15 official having authority over or functions relating to the
16 agency immediately before the effective date of this Act
17 shall provide to the Secretary such assistance, including
18 the use of personnel and assets, as he may request in pre-
19 paring for the transfer and integration of the agency into
20 the Department.

21 (b) SERVICES AND PERSONNEL.—During the transi-
22 tion period, upon the request of the Secretary, the head
23 of any executive agency may, on a reimbursable or non-
24 reimbursable basis, provide services or detail personnel to
25 assist with the transition.

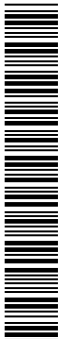


1 (c) TRANSFER OF FUNDS.—Until the transfer of an
2 agency to the Department, the President is authorized to
3 transfer to the Secretary not to exceed five percent of the
4 unobligated balance of any appropriation available to such
5 agency, to fund the purposes authorized in this Act, except
6 that not less than 15 days' notice shall be given to the
7 Committees on Appropriations of the Senate and House
8 of Representatives before any such funds transfer is made.

9 (d) ACTING OFFICIALS.—(1) During the transition
10 period, pending the advice and consent of the Senate to
11 the appointment of an officer required by this Act to be
12 appointed by and with such advice and consent, the Presi-
13 dent may designate any officer whose appointment was re-
14 quired to be made by and with such advice and consent
15 and who was such an officer immediately before the effec-
16 tive date of this Act (and who continues in office) or im-
17 mediately before such designation, to act in such office
18 until the same is filled as provided in this Act. While so
19 acting, such officers shall receive compensation at the
20 higher of—

21 (A) the rates provided by this Act for the re-
22 spective offices in which they act; or

23 (B) the rates provided for the offices held at
24 the time of designation.



1 (2) Nothing in this Act shall be understood to require
2 the advice and consent of the Senate to the appointment
3 by the President to a position in the Department of any
4 officer whose agency is transferred to the Department
5 pursuant to this Act and whose duties following such
6 transfer are germane to those performed before such
7 transfer.

8 (e) TRANSFER OF PERSONNEL, ASSETS, LIABIL-
9 ITIES, AND FUNCTIONS.—Upon the transfer of an agency
10 to the Department—

11 (1) the personnel, assets, and liabilities held by
12 or available in connection with the agency shall be
13 transferred to the Secretary for appropriate alloca-
14 tion, subject to the approval of the Director of the
15 Office of Management and Budget and notwith-
16 standing the provisions of section 1531(a)(2) of title
17 31, United States Code; and

18 (2) the Secretary shall have all functions relat-
19 ing to the agency that any other official could by law
20 exercise in relation to the agency immediately before
21 such transfer, and shall have in addition all func-
22 tions vested in the Secretary by this Act or other
23 law.



1 **SEC. 804. SAVINGS PROVISIONS.**

2 (a) COMPLETED ADMINISTRATIVE ACTIONS.—(1)

3 Completed administrative actions of an agency shall not
4 be affected by the enactment of this Act or the transfer
5 of such agency to the Department, but shall continue in
6 effect according to their terms until amended, modified,
7 superseded, terminated, set aside, or revoked in accord-
8 ance with law by an officer of the United States or a court
9 of competent jurisdiction, or by operation of law.

10 (2) For purposes of paragraph (1), the term “com-
11 pleted administrative action” includes orders, determina-
12 tions, rules, regulations, personnel actions, permits, agree-
13 ments, grants, contracts, certificates, licenses, registra-
14 tions, and privileges.

15 (b) PENDING PROCEEDINGS.—Subject to the author-
16 ity of the Secretary under this Act—

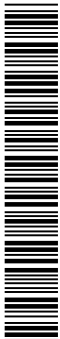
17 (1) pending proceedings in an agency, including
18 notices of proposed rulemaking, and applications for
19 licenses, permits, certificates, grants, and financial
20 assistance, shall continue notwithstanding the enact-
21 ment of this Act or the transfer of the agency to the
22 Department, unless discontinued or modified under
23 the same terms and conditions and to the same ex-
24 tent that such discontinuance could have occurred if
25 such enactment or transfer had not occurred; and



1 (2) orders issued in such proceedings, and ap-
2 peals therefrom, and payments made pursuant to
3 such orders, shall issue in the same manner and on
4 the same terms as if this Act had not been enacted
5 or the agency had not been transferred, and any
6 such orders shall continue in effect until amended,
7 modified, superseded, terminated, set aside, or re-
8 voked by an officer of the United States or a court
9 of competent jurisdiction, or by operation of law.

10 (c) PENDING CIVIL ACTIONS.—Subject to the author-
11 ity of the Secretary under this Act, pending civil actions
12 shall continue notwithstanding the enactment of this Act
13 or the transfer of an agency to the Department, and in
14 such civil actions, proceedings shall be had, appeals taken,
15 and judgments rendered and enforced in the same manner
16 and with the same effect as if such enactment or transfer
17 had not occurred.

18 (d) REFERENCES.—References relating to an agency
19 that is transferred to the Department in statutes, Execu-
20 tive orders, rules, regulations, directives, or delegations of
21 authority that precede such transfer or the effective date
22 of this Act shall be deemed to refer, as appropriate, to
23 the Department, to its officers, employees, or agents, or
24 to its corresponding organizational units or functions.
25 Statutory reporting requirements that applied in relation



1 to such an agency immediately before the effective date
2 of this Act shall continue to apply following such transfer
3 if they refer to the agency by name.

4 (e) EMPLOYMENT PROVISIONS.—(1) Notwith-
5 standing the generality of the foregoing (including sub-
6 sections (a) and (d)), in and for the Department the Sec-
7 retary may, in regulations prescribed jointly with the Di-
8 rector of the Office of Personnel Management, adopt the
9 rules, procedures, terms, and conditions, established by
10 statute, rule, or regulation before the effective date of this
11 Act, relating to employment in any agency transferred to
12 the Department pursuant to this Act, except that the
13 rules, procedures, terms, and conditions relating to em-
14 ployment in the Transportation Security Administration
15 before the effective date of this Act may be applied only
16 to the personnel employed by or carrying out the functions
17 of the Transportation Security Administration.

18 (2) Except as otherwise provided in this Act, or under
19 authority granted by this Act, the transfer pursuant to
20 this Act of personnel shall not alter the terms and condi-
21 tions of employment, including compensation, of any em-
22 ployee so transferred.

23 **SEC. 805. TERMINATIONS.**

24 Except as otherwise provided in this Act, whenever
25 all the functions vested by law in any agency have been



1 transferred pursuant to this Act, each position and office
2 the incumbent of which was authorized to receive com-
3 pensation at the rates prescribed for an office or position
4 at level II, III, IV, or V, of the Executive Schedule, shall
5 terminate.

6 **SEC. 806. INCIDENTAL TRANSFERS.**

7 The Director of the Office of Management and Budg-
8 et, in consultation with the Secretary, is authorized and
9 directed to make such additional incidental dispositions of
10 personnel, assets, and liabilities held, used, arising from,
11 available, or to be made available, in connection with the
12 functions transferred by this Act, as he may deem nec-
13 essary to accomplish the purposes of this Act.

14 **TITLE IX—CONFORMING AND**
15 **TECHNICAL AMENDMENTS**

16 **SEC. 901. EXECUTIVE DEPARTMENT.**

17 Section 101 of title 5, United States Code, is amend-
18 ed by inserting after “The Department of Housing and
19 Urban Development.” the following:

20 “The Department of Homeland Security.”.

21 **SEC. 902. EXECUTIVE SCHEDULE.**

22 Title 5, United States Code, is amended—

23 (1) in section 5312, by inserting “Secretary of
24 Homeland Security.” as a new item after “Affairs.”;



1 (2) in section 5313, by inserting the following
2 new items after “Affairs.”:

3 “Deputy Secretary, Department of Homeland
4 Security.”

5 “Deputy Secretary for Policy, Department of
6 Homeland Security.”

7 “Deputy Secretary for Management, Depart-
8 ment of Homeland Security.”

9 (3) in section 5314, by inserting “Under Secre-
10 taries, Department of Homeland Security.” as a new
11 item after “Affairs.” the third place it appears;

12 (4) in section 5315, by inserting after “Af-
13 fairs.” the first place it appears the following:

14 “Assistant Secretaries, Department of Home-
15 land Security.

16 “General Counsel, Department of Homeland
17 Security.

18 “Chief Financial Officer, Department of Home-
19 land Security.

20 “Chief Information Officer, Department of
21 Homeland Security.

22 “Inspector General, Department of Homeland
23 Security.”.



1 **SEC. 903. INSPECTOR GENERAL.**

2 (a) IN GENERAL.—Section 11 of the Inspector Gen-
3 eral Act of 1978 (Public Law 95–452) is amended—

4 (1) by inserting “Homeland Security,” after
5 “Transportation,” each place it appears;

6 (2) by striking “; and” each place it appears
7 and inserting “;”;

8 (3) by striking “,” and inserting “,”; and

9 (4) by striking “;” and inserting “;”.

10 (b) OVERSIGHT RESPONSIBILITY.—Section 8D of the
11 Inspector General Act of 1978 (5 U.S.C. App.) is
12 amended—

13 (1) in subsection (b) by striking “, the Office
14 of Internal Affairs of the United States Customs
15 Service, and the Office of Inspections of the United
16 States Secret Service,”;

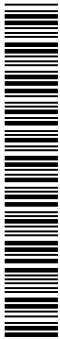
17 (2) in subsection (c) by striking “and services”;
18 and

19 (3) in subsection (d) by striking “or service”
20 each place it appears.

21 **SEC. 904. CHIEF FINANCIAL OFFICER.**

22 Section 901(b)(1) of title 31, United States Code, is
23 amended—

24 (1) by redesignating subparagraphs (G)
25 through (P) as subparagraphs (H) through (Q), re-
26 spectively; and



1 (2) by inserting the following new subparagraph
2 after subparagraph (F):

3 “(G) The Department of Homeland Secu-
4 rity.”.

5 **SEC. 905. CHIEF INFORMATION OFFICER.**

6 (a) CLINGER–COHEN ACT.—(1) The provisions en-
7 acted in section 5125 of the Clinger–Cohen Act of 1996
8 (division E of Public Law 104–106; 110 Stat. 684) shall
9 apply with respect to the Chief Information Officer of the
10 Department.

11 (2) Section 5131(c) of the Clinger–Cohen Act of 1996
12 (40 U.S.C. 1441(c)) is amended by inserting “or ap-
13 pointed” after “the Chief Information Officer designated”.

14 (b) TITLE 44.—Chapter 35 of title 44, United States
15 Code, is amended—

16 (1) in section 3506(a)(2)—

17 (A) in subparagraph (A) by striking “sub-
18 paragraph (B)” and inserting “subparagraphs
19 (B) and (C)”; and

20 (B) by adding at the end the following:

21 “(C) The Chief Information Officer of the Depart-
22 ment of Homeland Security shall be an individual who is
23 appointed by the President.”;

24 (2) in each of subsections (a)(3), (a)(4), and

25 (c)(1) of section 3506 by inserting “or appointed”



1 after “the Chief Information Officer designated”;
2 and

3 (3) in section 3507(i) by inserting “or ap-
4 pointed” after “the Chief Information Officer des-
5 ignated”.

6 **SEC. 906. UNITED STATES SECRET SERVICE.**

7 (a) IN GENERAL.—The United States Code is
8 amended in sections 202 and 208 of title 3, and in section
9 3056 of title 18, by striking “of the Treasury”, each place
10 it appears and inserting “of Homeland Security”.

11 (b) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date of transfer of
13 the United States Secret Service to the Department.

14 **SEC. 907. COAST GUARD.**

15 (a) TITLE 14, U.S.C.—Title 14 of the United States
16 Code is amended—

17 (1) in sections 1, 3, 53, 95, 145, 516, 666, 669,
18 673 (as added by Public Law 104–201), 673 (as
19 added by Public Law 104–324), 674, 687, and 688,
20 by striking “of Transportation”, each place it ap-
21 pears, and inserting “of Homeland Security”; and

22 (2) after executing the other amendments re-
23 quired by this subsection, by redesignating the sec-
24 tion 673 added by Public Law 104–324 as section
25 673a.



1 (b) TITLE 10, U.S.C.—Section 801(1) of title 10,
2 United States Code, is amended by striking “the General
3 Counsel of the Department of Transportation” and insert-
4 ing “an official designated to serve as Judge Advocate
5 General of the Coast Guard by the Secretary of Homeland
6 Security”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of transfer of
9 the Coast Guard to the Department.

10 **SEC. 908. STRATEGIC NATIONAL STOCKPILE AND SMALL-**
11 **POX VACCINE DEVELOPMENT.**

12 (a) IN GENERAL.—The Public Health Security and
13 Bioterrorism Preparedness and Response Act of 2002 is
14 amended—

15 (1) in section 121(a)(1)—

16 (A) by striking “Secretary of Health and
17 Human Services” and inserting “Secretary of
18 Homeland Security”;

19 (B) by inserting “the Secretary of Health
20 and Human Services and” between “in coordi-
21 nation with” and “the Secretary of Veterans
22 Affairs”; and

23 (C) by inserting “of Health and Human
24 Services” after “as are determined by the Sec-
25 retary”; and



1 (2) in subsections 121(a)(2) and (b), by insert-
2 ing “of Health and Human Services” after “Sec-
3 retary” each place it appears.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of transfer of
6 the Strategic National Stockpile of the Department of
7 Health and Human Services to the Department.

8 **SEC. 909. SELECT AGENT REGISTRATION.**

9 (a) PUBLIC HEALTH SERVICE ACT.—The Public
10 Health Service Act is amended—

11 (1) in section 351A(a)(1)(A), by inserting “(as
12 defined in subsection (l)(9))” after “Secretary”;

13 (2) in section 351A(h)(2)(A), by inserting “De-
14 partment of Homeland Security, the” before “De-
15 partment of Health and Human Services”;

16 (3) in section 351A(l), by inserting after para-
17 graph (8) a new paragraph as follows:

18 “(9) The term ‘Secretary’ means the Secretary
19 of Homeland Security, in consultation with the Sec-
20 retary of Health and Human Services.”; and

21 (4) in section 352A(i)—

22 (A) by striking “(1)” the first place it ap-
23 pears; and

24 (B) by striking paragraph (2).



1 (b) PUBLIC HEALTH SECURITY AND BIOTERRORISM
2 PREPAREDNESS AND RESPONSE ACT OF 2002.—Section
3 201(b) of the Public Health Security and Bioterrorism
4 Preparedness and Response Act of 2002 is amended by
5 striking “Secretary of Health and Human Services” and
6 inserting “Secretary of Homeland Security”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of transfer of
9 the select agent registration enforcement programs and
10 activities of the Department of Health and Human Serv-
11 ices to the Department.

12 **SEC. 910. MEMBERSHIP OF SECRETARY ON NATIONAL SE-**
13 **CURITY COUNCIL.**

14 Section 101(a) of the National Security Act of 1947
15 (50 U.S.C. 402(a)) is amended in the fourth sentence—

16 (1) in paragraph (6), by striking “and” at the
17 end;

18 (2) by redesignating paragraph (7) as para-
19 graph (8); and

20 (3) by inserting after paragraph (6) the fol-
21 lowing new paragraph:

22 “(7) the Secretary of Homeland Security.”.



1 **SEC. 911. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS**
2 **CENTER.**

3 There is established in the Department of Defense
4 a National Bio-Weapons Defense Analysis Center, whose
5 mission is to develop countermeasures to potential attacks
6 by terrorists using weapons of mass destruction.

7 **TITLE X—INFORMATION**
8 **SECURITY**

9 **SEC. 1001. INFORMATION SECURITY.**

10 (a) **SHORT TITLE.**—The amendments made by this
11 title may be cited as the “Federal Information Security
12 Management Act of 2002”.

13 (b) **INFORMATION SECURITY.**—

14 (1) **IN GENERAL.**—Subchapter II of chapter 35
15 of title 44, United States Code, is amended to read
16 as follows:

17 **“SUBCHAPTER II—INFORMATION**
18 **SECURITY**

19 **“§ 3531. Purposes**

20 “The purposes of this subchapter are to—

21 “(1) provide a comprehensive framework for en-
22 suring the effectiveness of information security con-
23 trols over information resources that support Fed-
24 eral operations and assets;

25 “(2) recognize the highly networked nature of
26 the current Federal computing environment and pro-



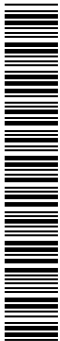
1 vide effective governmentwide management and over-
2 sight of the related information security risks, in-
3 cluding coordination of information security efforts
4 throughout the civilian, national security, and law
5 enforcement communities;

6 “(3) provide for development and maintenance
7 of minimum controls required to protect Federal in-
8 formation and information systems;

9 “(4) provide a mechanism for improved over-
10 sight of Federal agency information security pro-
11 grams;

12 “(5) acknowledge that commercially developed
13 information security products offer advanced, dy-
14 namic, robust, and effective information security so-
15 lutions, reflecting market solutions for the protection
16 of critical information infrastructures important to
17 the national defense and economic security of the
18 nation that are designed, built, and operated by the
19 private sector; and

20 “(6) recognize that the selection of specific
21 technical hardware and software information secu-
22 rity solutions should be left to individual agencies
23 from among commercially developed products.”.



1 **“§ 3532. Definitions**

2 “(a) IN GENERAL.—Except as provided under sub-
3 section (b), the definitions under section 3502 shall apply
4 to this subchapter.

5 “(b) ADDITIONAL DEFINITIONS.—As used in this
6 subchapter—

7 “(1) the term ‘information security’ means pro-
8 tecting information and information systems from
9 unauthorized access, use, disclosure, disruption,
10 modification, or destruction in order to provide—

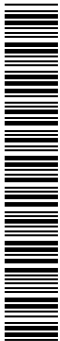
11 “(A) integrity, which means guarding
12 against improper information modification or
13 destruction, and includes ensuring information
14 nonrepudiation and authenticity;

15 “(B) confidentiality, which means pre-
16 serving authorized restrictions on access and
17 disclosure, including means for protecting per-
18 sonal privacy and proprietary information;

19 “(C) availability, which means ensuring
20 timely and reliable access to and use of infor-
21 mation; and

22 “(D) authentication, which means utilizing
23 digital credentials to assure the identity of
24 users and validate their access;

25 “(2) the term ‘national security system’ means
26 any information system (including any telecommuni-



1 cations system) used or operated by an agency or by
2 a contractor of an agency, or other organization on
3 behalf of an agency—

4 “(A) the function, operation, or use of
5 which—

6 “(i) involves intelligence activities;

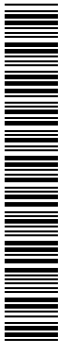
7 “(ii) involves cryptologic activities re-
8 lated to national security;

9 “(iii) involves command and control of
10 military forces;

11 “(iv) involves equipment that is an in-
12 tegral part of a weapon or weapons sys-
13 tem; or

14 “(v) is critical to the direct fulfillment
15 of military or intelligence missions pro-
16 vided that this definition does not apply to
17 a system that is used for routine adminis-
18 trative and business applications (including
19 payroll, finance, logistics, and personnel
20 management applications); or

21 “(B) is protected at all times by proce-
22 dures established for information that have
23 been specifically authorized under criteria es-
24 tablished by an Executive order or an Act of



1 Congress to be kept secret in the interest of na-
2 tional defense or foreign policy; and

3 “(3) the term ‘information technology’ has the
4 meaning given that term in section 5002 of the
5 Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

6 **“§ 3533. Authority and functions of the Director**

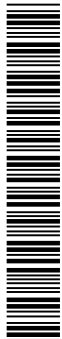
7 “(a) The Director shall oversee agency information
8 security policies and practices, including—

9 “(1) developing and overseeing the implementa-
10 tion of policies, principles, standards, and guidelines
11 on information security, including through the over-
12 sight of standards promulgated under section 5131
13 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

14 “(2) requiring agencies, consistent with the
15 standards promulgated under such section 5131 and
16 the requirements of this subchapter, to identify and
17 provide information security protections commensu-
18 rate with the risk and magnitude of the harm result-
19 ing from the unauthorized access, use, disclosure,
20 disruption, modification, or destruction of—

21 “(A) information collected or maintained
22 by or on behalf of an agency; or

23 “(B) information systems used or operated
24 by an agency or by a contractor of an agency
25 or other organization on behalf of an agency;



1 “(3) coordinating the development of standards
2 and guidelines under section 20 of the National In-
3 stitute of Standards and Technology Act (15 U.S.C.
4 278g-3) with agencies and offices operating or exer-
5 cising control of national security systems (including
6 the National Security Agency) to assure, to the max-
7 imum extent feasible, that such standards and
8 guidelines are complementary with standards and
9 guidelines developed for national security systems;

10 “(4) overseeing agency compliance with the re-
11 quirements of this subchapter, including through
12 any authorized action under section 5113(b)(5) of
13 the Clinger-Cohen Act of 1996 (40 U.S.C.
14 1413(b)(5)) to enforce accountability for compliance
15 with such requirements;

16 “(5) reviewing at least annually, and approving
17 or disapproving, agency information security pro-
18 grams required under section 3534(b);

19 “(6) coordinating information security policies
20 and procedures with related information resources
21 management policies and procedures; and

22 “(7) reporting to Congress no later than March
23 1 of each year on agency compliance with the re-
24 quirements of this subchapter, including—



1 “(A) a summary of the findings of evalua-
2 tions required by section 3535;

3 “(B) significant deficiencies in agency in-
4 formation security practices;

5 “(C) planned remedial action to address
6 such deficiencies; and

7 “(D) a summary of, and the views of the
8 Director on, the report prepared by the Na-
9 tional Institute of Standards and Technology
10 under section 20(e)(7) of the National Institute
11 of Standards and Technology Act (15 U.S.C.
12 278g-3).”.

13 “(b) Except for the authorities described in para-
14 graphs (4) and (7) of subsection (a), the authorities of
15 the Director under this section shall not apply to national
16 security systems.

17 **“§ 3534. Federal agency responsibilities**

18 “(a) The head of each agency shall—

19 “(1) be responsible for—

20 “(A) providing information security protec-
21 tions commensurate with the risk and mag-
22 nitude of the harm resulting from unauthorized
23 access, use, disclosure, disruption, modification,
24 or destruction of—



1 “(i) information collected or main-
2 tained by or on behalf of the agency; and

3 “(ii) information systems used or op-
4 erated by an agency or by a contractor of
5 an agency or other organization on behalf
6 of an agency;

7 “(B) complying with the requirements of
8 this subchapter and related policies, procedures,
9 standards, and guidelines, including—

10 “(i) information security standards
11 promulgated under section 5131 of the
12 Clinger-Cohen Act of 1996 (40 U.S.C.
13 1441); and

14 “(ii) information security standards
15 and guidelines for national security sys-
16 tems issued in accordance with law and as
17 directed by the President; and

18 “(C) ensuring that information security
19 management processes are integrated with
20 agency strategic and operational planning proc-
21 esses;

22 “(2) ensure that senior agency officials provide
23 information security for the information and infor-
24 mation systems that support the operations and as-
25 sets under their control, including through—



1 “(A) assessing the risk and magnitude of
2 the harm that could result from the unauthor-
3 ized access, use, disclosure, disruption, modi-
4 fication, or destruction of such information or
5 information systems;

6 “(B) determining the levels of information
7 security appropriate to protect such information
8 and information systems in accordance with
9 standards promulgated under section 5131 of
10 the Clinger-Cohen Act of 1996 (40 U.S.C.
11 1441) for information security classifications
12 and related requirements;

13 “(C) implementing policies and procedures
14 to cost-effectively reduce risks to an acceptable
15 level; and

16 “(D) periodically testing and evaluating in-
17 formation security controls and techniques to
18 ensure that they are effectively implemented;

19 “(3) delegate to the agency Chief Information
20 Officer established under section 3506 (or com-
21 parable official in an agency not covered by such
22 section) the authority to ensure compliance with the
23 requirements imposed on the agency under this sub-
24 chapter, including—



1 “(A) designating a senior agency informa-
2 tion security officer who shall—

3 “(i) carry out the Chief Information
4 Officer’s responsibilities under this section;

5 “(ii) possess professional qualifica-
6 tions, including training and experience,
7 required to administer the functions de-
8 scribed under this section;

9 “(iii) have information security duties
10 as that official’s primary duty; and

11 “(iv) head an office with the mission
12 and resources to assist in ensuring agency
13 compliance with this section;

14 “(B) developing and maintaining an agen-
15 cywide information security program as re-
16 quired by subsection (b);

17 “(C) developing and maintaining informa-
18 tion security policies, procedures, and control
19 techniques to address all applicable require-
20 ments, including those issued under section
21 3533 of this title, and section 5131 of the
22 Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

23 “(D) training and overseeing personnel
24 with significant responsibilities for information



1 security with respect to such responsibilities;
2 and

3 “(E) assisting senior agency officials con-
4 cerning their responsibilities under subpara-
5 graph (2);

6 “(4) ensure that the agency has trained per-
7 sonnel sufficient to assist the agency in complying
8 with the requirements of this subchapter and related
9 policies, procedures, standards, and guidelines; and

10 “(5) ensure that the agency Chief Information
11 Officer, in coordination with other senior agency of-
12 ficials, reports annually to the agency head on the
13 effectiveness of the agency information security pro-
14 gram, including progress of remedial actions.

15 “(b) Each agency shall develop, document, and imple-
16 ment an agencywide information security program, ap-
17 proved by the Director under section 3533(a)(5), to pro-
18 vide information security for the information and informa-
19 tion systems that support the operations and assets of the
20 agency, including those provided or managed by another
21 agency, contractor, or other source, that includes—

22 “(1) periodic assessments of the risk and mag-
23 nitude of the harm that could result from the unau-
24 thorized access, use, disclosure, disruption, modifica-
25 tion, or destruction of information and information



1 systems that support the operations and assets of
2 the agency;

3 “(2) policies and procedures that—

4 “(A) are based on the risk assessments re-
5 quired by subparagraph (1);

6 “(B) cost-effectively reduce information se-
7 curity risks to an acceptable level;

8 “(C) ensure that information security is
9 addressed throughout the life cycle of each
10 agency information system; and

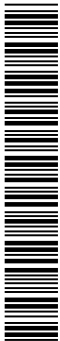
11 “(D) ensure compliance with—

12 “(i) the requirements of this sub-
13 chapter;

14 “(ii) policies and procedures as may
15 be prescribed by the Director, and infor-
16 mation security standards promulgated
17 under section 5131 of the Clinger-Cohen
18 Act of 1996 (40 U.S.C. 1441);

19 “(iii) minimally acceptable system
20 configuration requirements, as determined
21 by the agency; and

22 “(iv) any other applicable require-
23 ments, including standards and guidelines
24 for national security systems issued in ac-



1 cordance with law and as directed by the
2 President;

3 “(3) subordinate plans for providing adequate
4 information security for networks, facilities, and sys-
5 tems or groups of information systems, as appro-
6 priate;

7 “(4) security awareness training to inform per-
8 sonnel, including contractors and other users of in-
9 formation systems that support the operations and
10 assets of the agency, of—

11 “(A) information security risks associated
12 with their activities; and

13 “(B) their responsibilities in complying
14 with agency policies and procedures designed to
15 reduce these risks;

16 “(5) periodic testing and evaluation of the ef-
17 fectiveness of information security policies, proce-
18 dures, and practices, to be performed with a fre-
19 quency depending on risk, but no less than annually,
20 of which such testing—

21 “(A) shall include testing of management,
22 operational, and technical controls of every in-
23 formation system identified in the inventory re-
24 quired under section 3505(c); and



1 “(B) may include testing relied on in a
2 evaluation under section 3535;

3 “(6) a process for planning, implementing, eval-
4 uating, and documenting remedial action to address
5 any deficiencies in the information security policies,
6 procedures, and practices of the agency;

7 “(7) procedures for detecting, reporting, and re-
8 sponding to security incidents, consistent with guid-
9 ance issued under section 3536, including—

10 “(A) mitigating risks associated with such
11 incidents before substantial damage is done;

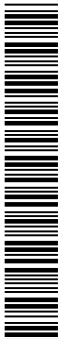
12 “(B) notifying and consulting with the
13 Federal information security incident center es-
14 tablished under section 3536; and

15 “(C) notifying and consulting with, as
16 appropriate—

17 “(i) law enforcement agencies and rel-
18 evant Offices of Inspector General;

19 “(ii) an office designated by the Presi-
20 dent for any incident involving a national
21 security system; and

22 “(iii) any other agency or office, in ac-
23 cordance with law or as directed by the
24 President; and



1 “(8) plans and procedures to ensure continuity
2 of operations for information systems that support
3 the operations and assets of the agency.

4 “(c) Each agency shall—

5 “(1) report annually to the Director, the Com-
6 mittees on Government Reform and Science of the
7 House of Representatives, the Committees on Gov-
8 ernmental Affairs and Commerce, Science, and
9 Transportation of the Senate, the appropriate au-
10 thorization and appropriations committees of Con-
11 gress, and the Comptroller General on the adequacy
12 and effectiveness of information security policies,
13 procedures, and practices, and compliance with the
14 requirements of this subchapter, including compli-
15 ance with each requirement of subsection (b);

16 “(2) address the adequacy and effectiveness of
17 information security policies, procedures, and prac-
18 tices in plans and reports relating to—

19 “(A) annual agency budgets;

20 “(B) information resources management
21 under subchapter 1 of this chapter;

22 “(C) information technology management
23 under the Clinger-Cohen Act of 1996 (40
24 U.S.C. 1401 et seq.);



1 “(D) program performance under sections
2 1105 and 1115 through 1119 of title 31, and
3 sections 2801 and 2805 of title 39;

4 “(E) financial management under chapter
5 9 of title 31, and the Chief Financial Officers
6 Act of 1990 (31 U.S.C. 501 note; Public Law
7 101–576) (and the amendments made by that
8 Act);

9 “(F) financial management systems under
10 the Federal Financial Management Improve-
11 ment Act (31 U.S.C. 3512 note); and

12 “(G) internal accounting and administra-
13 tive controls under section 3512 of title 31,
14 United States Code, (known as the ‘Federal
15 Managers Financial Integrity Act’); and

16 “(3) report any significant deficiency in a pol-
17 icy, procedure, or practice identified under para-
18 graph (1) or (2)—

19 “(A) as a material weakness in reporting
20 under section 3512 of title 31, United States
21 Code; and

22 “(B) if relating to financial management
23 systems, as an instance of a lack of substantial
24 compliance under the Federal Financial Man-



1 agement Improvement Act (31 U.S.C. 3512
2 note).

3 “(d)(1) In addition to the requirements of subsection
4 (c), each agency, in consultation with the Director, shall
5 include as part of the performance plan required under
6 section 1115 of title 31 a description of—

7 “(A) the time periods, and

8 “(B) the resources, including budget, staffing,
9 and training,

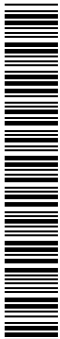
10 that are necessary to implement the program required
11 under subsection (b).

12 “(2) The description under paragraph (1) shall be
13 based on the risk assessments required under subsection
14 (b)(2)(1).

15 “(e) Each agency shall provide the public with timely
16 notice and opportunities for comment on proposed infor-
17 mation security policies and procedures to the extent that
18 such policies and procedures affect communication with
19 the public.

20 **“§ 3535. Annual independent evaluation**

21 “(a)(1) Each year each agency shall have performed
22 an independent evaluation of the information security pro-
23 gram and practices of that agency to determine the effec-
24 tiveness of such program and practices.



1 “(2) Each evaluation by an agency under this section
2 shall include—

3 “(A) testing of the effectiveness of information
4 security policies, procedures, and practices of a rep-
5 resentative subset of the agency’s information sys-
6 tems;

7 “(B) an assessment (made on the basis of the
8 results of the testing) of compliance with—

9 “(i) the requirements of this subchapter;
10 and

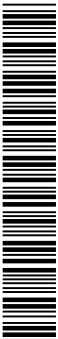
11 “(ii) related information security policies,
12 procedures, standards, and guidelines; and

13 “(C) separate presentations, as appropriate, re-
14 garding information security relating to national se-
15 curity systems.

16 “(b) Subject to subsection (c)—

17 “(1) for each agency with an Inspector General
18 appointed under the Inspector General Act of 1978,
19 the annual evaluation required by this section shall
20 be performed by the Inspector General or by an
21 independent external auditor, as determined by the
22 Inspector General of the agency; and

23 “(2) for each agency to which paragraph (1)
24 does not apply, the head of the agency shall engage



1 an independent external auditor to perform the eval-
2 uation.

3 “(c) For each agency operating or exercising control
4 of a national security system, that portion of the evalua-
5 tion required by this section directly relating to a national
6 security system shall be performed—

7 “(1) only by an entity designated by the agency
8 head; and

9 “(2) in such a manner as to ensure appropriate
10 protection for information associated with any infor-
11 mation security vulnerability in such system com-
12 mensurate with the risk and in accordance with all
13 applicable laws.

14 “(d) The evaluation required by this section—

15 “(1) shall be performed in accordance with gen-
16 erally accepted government auditing standards; and

17 “(2) may be based in whole or in part on an
18 audit, evaluation, or report relating to programs or
19 practices of the applicable agency.

20 “(e) Each year, not later than such date established
21 by the Director, the head of each agency shall submit to
22 the Director the results of the evaluation required under
23 this section.

24 “(f) Agencies and evaluators shall take appropriate
25 steps to ensure the protection of information which, if dis-



1 closed, may adversely affect information security. Such
2 protections shall be commensurate with the risk and com-
3 ply with all applicable laws and regulations.

4 “(g)(1) The Director shall summarize the results of
5 the evaluations conducted under this section in the report
6 to Congress required under section 3533(a)(8).

7 “(2) The Director’s report to Congress under this
8 subsection shall summarize information regarding infor-
9 mation security relating to national security systems in
10 such a manner as to ensure appropriate protection for in-
11 formation associated with any information security vulner-
12 ability in such system commensurate with the risk and in
13 accordance with all applicable laws.

14 “(3) Evaluations and any other descriptions of infor-
15 mation systems under the authority and control of the Di-
16 rector of Central Intelligence or of National Foreign Intel-
17 ligence Programs systems under the authority and control
18 of the Secretary of Defense shall be made available to Con-
19 gress only through the appropriate oversight committees
20 of Congress, in accordance with applicable laws.

21 “(h) The Comptroller General shall periodically
22 evaluate and report to Congress on—

23 “(1) the adequacy and effectiveness of agency
24 information security policies and practices; and



1 “(2) implementation of the requirements of this
2 subchapter.

3 **“§ 3536. Federal information security incident center**

4 “(a) The Secretary of Homeland Security shall cause
5 to be established and operated a central Federal informa-
6 tion security incident center to—

7 “(1) provide timely technical assistance to oper-
8 ators of agency information systems regarding secu-
9 rity incidents, including guidance on detecting and
10 handling information security incidents;

11 “(2) compile and analyze information about in-
12 cidents that threaten information security;

13 “(3) inform operators of agency information
14 systems about current and potential information se-
15 curity threats, and vulnerabilities; and

16 “(4) consult with agencies or offices operating
17 or exercising control of national security systems (in-
18 cluding the National Security Agency) and such
19 other agencies or offices in accordance with law and
20 as directed by the President regarding information
21 security incidents and related matters.

22 “(b) Each agency operating or exercising control of
23 a national security system shall share information about
24 information security incidents, threats, and vulnerabilities
25 with the Federal information security incident center to



1 the extent consistent with standards and guidelines for na-
2 tional security systems, issued in accordance with law and
3 as directed by the President.

4 **“§ 3537. National security systems**

5 “The head of each agency operating or exercising
6 control of a national security system shall be responsible
7 for ensuring that the agency—

8 “(1) provides information security protections
9 commensurate with the risk and magnitude of the
10 harm resulting from the unauthorized access, use,
11 disclosure, disruption, modification, or destruction of
12 the information contained in such system;

13 “(2) implements information security policies
14 and practices as required by standards and guide-
15 lines for national security systems, issued in accord-
16 ance with law and as directed by the President; and

17 “(3) complies with the requirements of this sub-
18 chapter.

19 **“§ 3538. Authorization of appropriations**

20 “There are authorized to be appropriated to carry out
21 the provisions of this subchapter such sums as may be
22 necessary for each of fiscal years 2003 through 2007.

23 **“§ 3539. Effect on existing law**

24 “Nothing in this subchapter, section 5131 of the
25 Clinger-Cohen Act of 1996 (40 U.S.C. 1441), or section



1 20 of the National Standards and Technology Act (15
2 U.S.C. 278g-3) may be construed as affecting the author-
3 ity of the President, the Office of Management and Budg-
4 et or the Director thereof, the National Institute of Stand-
5 ards and Technology, or the head of any agency, with re-
6 spect to the authorized use or disclosure of information,
7 including with regard to the protection of personal privacy
8 under section 552a of title 5, the disclosure of information
9 under section 552 of title 5, the management and disposi-
10 tion of records under chapters 29, 31, or 33 of title 44,
11 the management of information resources under sub-
12 chapter I of chapter 35 of this title, or the disclosure of
13 information to the Congress or the Comptroller General
14 of the United States.”.

15 (2) CLERICAL AMENDMENT.—The items in the
16 table of sections at the beginning of such chapter 35
17 under the heading “SUBCHAPTER II” are amend-
18 ed to read as follows:

“3531. Purposes.

“3532. Definitions.

“3533. Authority and functions of the Director.

“3534. Federal agency responsibilities.

“3535. Annual independent evaluation.

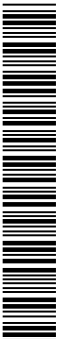
“3536. Federal information security incident center.

“3537. National security systems.

“3538. Authorization of appropriations.

“3539. Effect on existing law.”.

19 (c) INFORMATION SECURITY RESPONSIBILITIES OF
20 CERTAIN AGENCIES.—



1 (1) NATIONAL SECURITY RESPONSIBILITIES.—

2 (A) Nothing in this Act (including any amendment
3 made by this Act) shall supersede any authority of
4 the Secretary of Defense, the Director of Central In-
5 telligence, or other agency head, as authorized by
6 law and as directed by the President, with regard to
7 the operation, control, or management of national
8 security systems, as defined by section 3532(3) of
9 title 44, United States Code.

10 (B) Section 2224 of title 10, United States
11 Code, is amended—

12 (i) in subsection 2224(b), by striking “(b)
13 OBJECTIVES AND MINIMUM REQUIREMENTS.—
14 (1)” and inserting “(b) OBJECTIVES OF THE
15 PROGRAM.—”;

16 (ii) in subsection 2224(b), by striking “(2)
17 the program shall at a minimum meet the re-
18 quirements of section 3534 and 3535 of title
19 44, United States Code.”; and

20 (iii) in subsection 2224(c), by inserting
21 “, including through compliance with subtitle II
22 of chapter 35 of title 44” after “infrastruc-
23 ture”.

24 (2) ATOMIC ENERGY ACT OF 1954.—Nothing in
25 this Act shall supersede any requirement made by or



1 under the Atomic Energy Act of 1954 (42 U.S.C.
2 2011 et seq.). Restricted Data or Formerly Re-
3 stricted Data shall be handled, protected, classified,
4 downgraded, and declassified in conformity with the
5 Atomic Energy Act of 1954 (42 U.S.C. 2011 et
6 seq.).

7 **SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.**

8 Section 5131 of the Clinger-Cohen Act of 1996 (40
9 U.S.C. 1441) is amended to read as follows:

10 **“SEC. 5131. RESPONSIBILITIES FOR FEDERAL INFORMA-**
11 **TION SYSTEMS STANDARDS.**

12 “(a)(1)(A) Except as provided under paragraph (2),
13 the Secretary of Commerce shall, on the basis of proposed
14 standards developed under paragraphs (2) and (3) of sec-
15 tion 20(a) of the National Institute of Standards and
16 Technology Act (15 U.S.C. 278g–3(a)) and in consultation
17 with the Director of the Office of Management and Budg-
18 et, promulgate standards pertaining to Federal informa-
19 tion systems.

20 “(B) Standards promulgated under subparagraph
21 (A) shall include—

22 “(i) standards that provide minimum informa-
23 tion security requirements as determined under sec-
24 tion 20(b) of the National Institute of Standards
25 and Technology Act (15 U.S.C. 278g–3(b)); and



1 “(ii) such standards that are otherwise nec-
2 essary to improve the efficiency of operation or secu-
3 rity of Federal information systems.

4 “(C) Standards described under subparagraph (B)
5 shall be compulsory and binding.

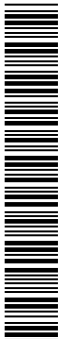
6 “(2) Standards and guidelines for national security
7 systems, as defined under section 3532(3) of title 44,
8 United States Code, shall be developed, promulgated, en-
9 forced, and overseen as otherwise authorized by law and
10 as directed by the President.

11 “(b) The head of an agency may employ standards
12 for the cost-effective information security for all oper-
13 ations and assets within or under the supervision of that
14 agency that are more stringent than the standards pro-
15 mulgated under this section, if such standards—

16 “(1) contain, at a minimum, the provisions of
17 those applicable standards made compulsory and
18 binding by the Secretary of Commerce; and

19 “(2) are otherwise consistent with policies and
20 guidelines issued under section 3533 of title 44,
21 United States Code.

22 “(c)(1) The decision regarding the promulgation of
23 any standard by the Secretary of Commerce under sub-
24 section (a) shall occur not later than 6 months after the
25 submission of the proposed standard to the Secretary of



1 Commerce under section 20 of the National Institute of
2 Standards and Technology Act (15 U.S.C. 278g-3).

3 “(2) A decision by the Secretary of Commerce to sig-
4 nificantly modify, or not promulgate, a proposed standard
5 developed as provided under section 20 of the National
6 Institute of Standards and Technology Act (15 U.S.C.
7 278g-3), shall be made after the public is given an oppor-
8 tunity to comment on the Secretary of Commerce’s pro-
9 posed decision.”.

10 “(d) In this section, the term ‘information security’
11 has the meaning given that term in section 3532(b)(1) of
12 title 44, United States Code.”.

13 **SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND**
14 **TECHNOLOGY.**

15 Section 20 of the National Institute of Standards and
16 Technology Act (15 U.S.C. 278g-3), is amended by strik-
17 ing the text and inserting the following:

18 “(a) The Institute shall—

19 “(1) have the mission of developing standards,
20 guidelines, and associated methods and techniques
21 for information systems;

22 “(2) develop standards and guidelines, includ-
23 ing minimum requirements, for information systems
24 used or operated by an agency or by a contractor of
25 an agency or other organization on behalf of an



1 agency, other than national security systems (as de-
2 fined in section 3532(b)(2) of title 44, United States
3 Code);

4 “(3) develop standards and guidelines, includ-
5 ing minimum requirements, for providing adequate
6 information security for all agency operations and
7 assets, but such standards and guidelines shall not
8 apply to national security systems; and

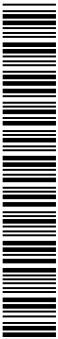
9 “(4) carry out the responsibilities described in
10 paragraph (3) through the Computer Security Divi-
11 sion.

12 “(b) The standards and guidelines required by sub-
13 section (a) shall include, at a minimum—

14 “(1)(A) standards to be used by all agencies to
15 categorize all information and information systems
16 collected or maintained by or on behalf of each agen-
17 cy based on the objectives of providing appropriate
18 levels of information security according to a range of
19 risk levels;

20 “(B) guidelines recommending the types of in-
21 formation and information systems to be included in
22 each such category; and

23 “(C) minimum information security require-
24 ments for information and information systems in
25 each such category;



1 “(2) a definition of and guidelines concerning
2 detection and handling of information security inci-
3 dents; and

4 “(3) guidelines developed in coordination with
5 the National Security Agency for identifying an in-
6 formation system as a national security system con-
7 sistent with applicable requirements for national se-
8 curity systems, issued in accordance with law and as
9 directed by the President.

10 “(c) In developing standards and guidelines required
11 by subsections (a) and (b), the Institute shall—

12 “(1) consult with other agencies and offices (in-
13 cluding, but not limited to, the Director of the Office
14 of Management and Budget, the Departments of
15 Defense and Energy, the National Security Agency,
16 and the General Accounting Office) to assure—

17 “(A) use of appropriate information secu-
18 rity policies, procedures, and techniques, in
19 order to improve information security and avoid
20 unnecessary and costly duplication of effort;
21 and

22 “(B) that such standards and guidelines
23 are complementary with standards and guide-
24 lines employed for the protection of national se-



1 security systems and information contained in
2 such systems;

3 “(2) provide the public with an opportunity to
4 comment on proposed standards and guidelines;

5 “(3) submit to the Secretary of Commerce for
6 promulgation under section 5131 of the Clinger-
7 Cohen Act of 1996 (40 U.S.C. 1441)—

8 “(A) standards, as required under sub-
9 section (b)(1)(A), no later than 12 months after
10 the date of the enactment of this section; and

11 “(B) minimum information security re-
12 quirements for each category, as required under
13 subsection (b)(1)(C), no later than 36 months
14 after the date of the enactment of this section;

15 “(4) issue guidelines as required under sub-
16 section (b)(1)(B), no later than 18 months after the
17 date of the enactment of this Act;

18 “(5) ensure that such standards and guidelines
19 do not require specific technological solutions or
20 products, including any specific hardware or soft-
21 ware security solutions;

22 “(6) ensure that such standards and guidelines
23 provide for sufficient flexibility to permit alternative
24 solutions to provide equivalent levels of protection
25 for identified information security risks; and



1 “(7) use flexible, performance-based standards
2 and guidelines that, to the greatest extent possible,
3 permit the use of off-the-shelf commercially devel-
4 oped information security products.”

5 “(d) The Institute shall—

6 “(1) submit standards developed pursuant to
7 subsection (a), along with recommendations as to
8 the extent to which these should be made compul-
9 sory and binding, to the Secretary of Commerce for
10 promulgation under section 5131 of the Clinger-
11 Cohen Act of 1996 (40 U.S.C. 1441);

12 “(2) provide assistance to agencies regarding—

13 “(A) compliance with the standards and
14 guidelines developed under subsection (a);

15 “(B) detecting and handling information
16 security incidents; and

17 “(C) information security policies, proce-
18 dures, and practices;

19 “(3) conduct research, as needed, to determine
20 the nature and extent of information security
21 vulnerabilities and techniques for providing cost-ef-
22 fective information security;

23 “(4) develop and periodically revise performance
24 indicators and measures for agency information se-
25 curity policies and practices;



1 “(5) evaluate private sector information secu-
2 rity policies and practices and commercially available
3 information technologies to assess potential applica-
4 tion by agencies to strengthen information security;

5 “(6) evaluate security policies and practices de-
6 veloped for national security systems to assess po-
7 tential application by agencies to strengthen infor-
8 mation security;

9 “(7) periodically assess the effectiveness of
10 standards and guidelines developed under this sec-
11 tion and undertake revisions as appropriate;

12 “(8) solicit and consider the recommendations
13 of the Information Security and Privacy Advisory
14 Board, established by section 21, regarding stand-
15 ards and guidelines developed under subsection (a)
16 and submit such recommendations to the Secretary
17 of Commerce with such standards submitted to the
18 Secretary; and

19 “(9) prepare an annual public report on activi-
20 ties undertaken in the previous year, and planned
21 for the coming year, to carry out responsibilities
22 under this section.

23 “(e) As used in this section—



1 “(1) the term ‘agency’ has the same meaning as
2 provided in section 3502(1) of title 44, United
3 States Code;

4 “(2) the term ‘information security’ has the
5 same meaning as provided in section 3532(1) of
6 such title;

7 “(3) the term ‘information system’ has the
8 same meaning as provided in section 3502(8) of
9 such title;

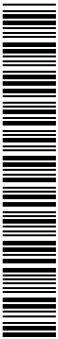
10 “(4) the term ‘information technology’ has the
11 same meaning as provided in section 5002 of the
12 Clinger-Cohen Act of 1996 (40 U.S.C. 1401); and

13 “(5) the term ‘national security system’ has the
14 same meaning as provided in section 3532(b)(2) of
15 such title.

16 “(f) There are authorized to be appropriated to the
17 Secretary of Commerce \$20,000,000 for each of fiscal
18 years 2003, 2004, 2005, 2006, and 2007 to enable the
19 National Institute of Standards and Technology to carry
20 out the provisions of this section.”.

21 **SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVI-**
22 **SORY BOARD.**

23 Section 21 of the National Institute of Standards and
24 Technology Act (15 U.S.C. 278g-4), is amended—



1 (1) in subsection (a), by striking “Computer
2 System Security and Privacy Advisory Board” and
3 inserting “Information Security and Privacy Advi-
4 sory Board”;

5 (2) in subsection (a)(1), by striking “computer
6 or telecommunications” and inserting “information
7 technology”;

8 (3) in subsection (a)(2)—

9 (A) by striking “computer or telecommuni-
10 cations technology” and inserting “information
11 technology”; and

12 (B) by striking “computer or telecommuni-
13 cations equipment” and inserting “information
14 technology”;

15 (4) in subsection (a)(3)—

16 (A) by striking “computer systems” and
17 inserting “information system”; and

18 (B) by striking “computer systems secu-
19 rity” and inserting “information security”;

20 (5) in subsection (b)(1) by striking “computer
21 systems security” and inserting “information secu-
22 rity”;

23 (6) in subsection (b) by striking paragraph (2)
24 and inserting the following:



1 “(2) to advise the Institute and the Director of
2 the Office of Management and Budget on informa-
3 tion security and privacy issues pertaining to Fed-
4 eral Government information systems, including
5 through review of proposed standards and guidelines
6 developed under section 20; and”;

7 (7) in subsection (b)(3) by inserting “annually”
8 after “report”;

9 (8) by inserting after subsection (e) the fol-
10 lowing new subsection:

11 “(f) The Board shall hold meetings at such locations
12 and at such time and place as determined by a majority
13 of the Board.”;

14 (9) by redesignating subsections (f) and (g) as
15 subsections (g) and (h), respectively;

16 (10) by striking subsection (h), as redesignated
17 by paragraph (9), and inserting the following:

18 “(h) As used in this section, the terms “information
19 system” and “information technology” have the meanings
20 given in section 20.”; and

21 (11) by inserting at the end the following:

22 “(i) There are authorized to be appropriated to the
23 Secretary of Commerce \$1,250,000 for each of fiscal years
24 2003, 2004, 2005, 2006, and 2007 to enable the Informa-
25 tion Security and Privacy Advisory Board to identify



1 emerging issues related to information security and pri-
2 vacy, and to convene public meetings on those subjects,
3 receive presentations, and publish reports and rec-
4 ommendations for public distribution.”.

5 **SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.**

6 (a) COMPUTER SECURITY ACT.—Sections 5 and 6 of
7 the Computer Security Act of 1987 (40 U.S.C. 1441 note)
8 are repealed.

9 (b) FLOYD D. SPENCE NATIONAL DEFENSE AU-
10 THORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd
11 D. Spence National Defense Authorization Act for Fiscal
12 Year 2001 (Public Law 106–398) is amended by striking
13 subtitle G of title X.

14 (c) PAPERWORK REDUCTION ACT.—(1) Section
15 3504(g) of title 44, United States Code, is amended—

16 (A) by adding “and” at the end of paragraph
17 (1);

18 (B) in paragraph (2)—

19 (i) by striking “sections 5 and 6 of the
20 Computer Security Act of 1987 (40 U.S.C. 759
21 note)” and inserting “subchapter II of this
22 title”; and

23 (ii) by striking the semicolon and inserting
24 a period; and

25 (C) by striking paragraph (3).



1 (2) Section 3505 of such title is amended by adding
2 at the end—

3 “(c)(1) The head of each agency shall develop and
4 maintain an inventory of the information systems (includ-
5 ing national security systems) operated by or under the
6 control of such agency;

7 “(2) The identification of information systems in an
8 inventory under this subsection shall include an identifica-
9 tion of the interfaces between each such system and all
10 other systems or networks, including those not operated
11 by or under the control of the agency;

12 “(3) Such inventory shall be—

13 “(A) updated at least annually;

14 “(B) made available to the Comptroller Gen-
15 eral; and

16 “(C) used to support information resources
17 management, including—

18 “(i) preparation and maintenance of the
19 inventory of information resources under sec-
20 tion 3506(b)(4);

21 “(ii) information technology planning,
22 budgeting, acquisition, and management under
23 section 3506(h), the Clinger-Cohen Act of
24 1996, and related laws and guidance;



1 “(iii) monitoring, testing, and evaluation of
2 information security controls under subchapter
3 II;

4 “(iv) preparation of the index of major in-
5 formation systems required under section
6 552(g) of title 5, United States Code; and

7 “(v) preparation of information system in-
8 ventories required for records management
9 under chapters 21, 29, 31, and 33.

10 “(4) The Director shall issue guidance for and over-
11 see the implementation of the requirements of this sub-
12 section.”.

13 (3) Section 3506(g) of such title is amended—

14 (A) by adding “and” at the end of paragraph
15 (1);

16 (B) in paragraph (2)—

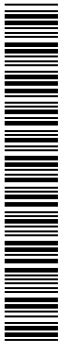
17 (i) by striking “the Computer Security Act
18 of 1987 (40 U.S.C. 759 note)” and inserting
19 “subchapter II of this title”; and

20 (ii) by striking the semicolon and inserting
21 a period; and

22 (C) by striking paragraph (3).

23 **SEC. 1006. CONSTRUCTION.**

24 Nothing in this Act, or the amendments made by this
25 Act, affects the authority of the National Institute of



1 Standards and Technology or the Department of Com-
2 merce relating to the development and promulgation of
3 standards or guidelines under paragraphs (1) and (2) of
4 section 20(a) of the National Institute of Standards and
5 Technology Act (15 U.S.C. 278g-3(a)).

6 **SEC. 1007. EFFECTIVE DATE.**

7 This title and the amendments made by this title
8 shall take effect 30 days after the date of the enactment
9 of this Act.

10 **TITLE XI—ADDITIONAL RESPON-**
11 **SIBILITIES OF SECRETARY**

12 **SEC. 1101. HOMELAND SECURITY EVENTS.**

13 (a) IN GENERAL.—At the request of the Governor
14 of the affected State, the Secretary may declare that a
15 major disaster constitutes a homeland security event for
16 the purposes of this section. Such a request shall be based
17 on a finding that Federal assistance is necessary because
18 the event poses a significant risk to the security of the
19 people and property of the Nation and is of such severity
20 and magnitude that effective response is beyond the capa-
21 bility of the effected State and local government.

22 (b) FEDERAL ASSISTANCE.—In any homeland secu-
23 rity event, in addition to providing other assistance made
24 available under title IV of the Robert T. Stafford Disaster



1 Relief and Emergency Assistance Act (42 U.S.C. 5170 et
2 seq.) in a major disaster, the Secretary may—

3 (1) establish a coordinating office and appoint
4 a disaster recovery director—

5 (A) to work with and coordinate efforts
6 with the Federal coordinating officer appointed
7 under section 302 of such Act;

8 (B) to oversee and coordinate the timely
9 distribution of Federal compensation to persons
10 injured in such disaster;

11 (C) develop methods to expedite claims for
12 relief and assistance by individuals and busi-
13 nesses;

14 (D) coordinate long-term recovery efforts
15 with State and local authorities; and

16 (E) work with Federal agencies to develop
17 more effective methods to assist affected par-
18 ties;

19 (2) require that if an office described in para-
20 graph (1) is established, the disaster recovery
21 director—

22 (A) shall consult with local officials in devel-
23 oping a recovery plan; and

24 (B) may appoint an independent claims man-
25 ager to assist in providing assistance;



1 (3) in any case in which a Federal official
2 issues a high security alert after a homeland security
3 event, provide technical assistance and reimburse-
4 ment to State and local governments in the disaster
5 area for expenses incurred related to such alert, in-
6 cluding overtime for law enforcement officers for a
7 period of time that the Secretary determines is nec-
8 essary;

9 (4) provide grants to a local government which
10 may suffer a substantial loss of tax and other reve-
11 nues;

12 (5) authorize reimbursement to a school system
13 for—

14 (A) providing additional classroom instruc-
15 tion time and related activities to students who
16 lost instructional time as a result of the home-
17 land security event;

18 (B) providing mental health and trauma
19 counseling and other appropriate support serv-
20 ices to students suffering from trauma-related
21 disorders resulting from the homeland security
22 event;

23 (C) providing guidance and grief coun-
24 seling and mental health services, including
25 overtime payment for counselors and mental



1 health professionals, for students and school
2 staff;

3 (D) clean up and structural inspections
4 and repairs of school facilities;

5 (E) textbooks and other school supplies
6 and equipment used to support the relocation of
7 students from schools in the disaster area;

8 (F) the cost of relocating students, includ-
9 ing transportation of students to temporary
10 school facilities; and

11 (G) loss of perishable food stock and rev-
12 enue lost from food services; and

13 (6) provide grants, equipment, supplies, and
14 personnel, to any non-profit medical facility that
15 has—

16 (A) lost equipment or revenue due to a
17 major disaster;

18 (B) incurred additional costs for security
19 enhancements in anticipation of a homeland se-
20 curity event;

21 (C) purchased emergency supplies, medi-
22 cine, or equipment, or contracted with medical
23 specialists, in order to respond to casualties ex-
24 pected to be treated as a result of a major dis-
25 aster; or



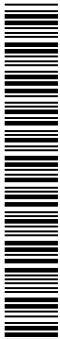
1 (D) complied with Federal and state re-
2 quirements concerning maintenance of health
3 service treatment procedures (such as dialysis
4 facilities) that may not be used as a result of
5 a major disaster;

6 (7) Provide reimbursement to for-profit tele-
7 communications and phone services and for-profit
8 utilities (including power, water (including water
9 provided by an irrigation organization or facility),
10 sewer, and wastewater treatment) except that these
11 for-profit entities shall be reimbursed only for struc-
12 tures and property losses that occur during a home-
13 land security event if such losses are not covered by
14 such entity's insurance policies; and

15 (8) authorize testing of indoor air quality
16 deemed necessary by the Under Secretary for Chem-
17 ical, Biological, Radiological, and Nuclear Counter-
18 measures and to undertake such remedial actions as
19 may be necessary, in the discretion of the Under
20 Secretary, to protect human health and safety from
21 the contamination of indoor air quality following any
22 such event.

23 **SEC. 1102. STANDARDS AND REPORTING.**

24 The Director of the Office of Management and Budg-
25 et shall—



1 (1) establish standards for reporting informa-
2 tion regarding disaster efforts made by each agency
3 that assists in providing relief in a disaster that the
4 Secretary has determined constitutes a homeland se-
5 curity event under section 1101;

6 (2) collect data from each such agency regard-
7 ing the efforts of such agency for each major dis-
8 aster described in paragraph (1) not less than once
9 each year;

10 (3) report such data to the appropriate commit-
11 tees of Congress annually.

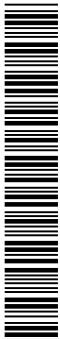
12 **SEC. 1103. SPECIAL COMMISSION TO REVIEW AIR QUALITY.**

13 The Secretary shall appoint a special commission to
14 undertake a study of the authorities available to the Envi-
15 ronmental Protection Agency following a major disaster
16 that the Secretary determines constitutes a homeland se-
17 curity event under section 1001, particularly a terrorist
18 attack using chemical, biological, or nuclear weapons. The
19 Commission shall examine the agency's authorities to—

20 (1) monitor the environment,

21 (2) evaluate health risks associated with air pol-
22 lutants that may be released into the environment as
23 result of such a disaster; and

24 (3) communicate with affected communities and
25 first responders.



1 The Commission shall submit a report to the Secretary
2 and to the Congress containing the results of such study
3 and including any recommendations of the special commis-
4 sion regarding the clarification and recommendation of
5 Environmental Protection Agency authorities in such situ-
6 ations.

